

THE PRODUCTIVITY COMMISSION
INQUIRY INTO A NATIONAL DISABILITY
LONG TERM CARE AND SUPPORT SCHEME

NSW Government Response to the Draft Report on Disability Care and Support

May 2011



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KEY POINTS

A National Disability Insurance Scheme is essential to ensuring a sustainable disability support system and in providing certainty for people with a disability, their families and carers.

The NSW Government supports, in principle, the proposed National Disability Insurance Scheme (NDIS) and National Injury Insurance Scheme (NIIS) and agrees that the Australian Government is best placed to provide the required funding base for the NDIS.

The NSW Government's vision for a future disability service system is one in which people with a disability, their families and carers are at the centre, directing the supports and services they need for full participation in the economic and social life of their community.

The proposals by the Productivity Commission provide security of funding arrangements and the basis of a model that has capacity to ensure coverage of all people with a disability and that supports are provided to people with a disability according to assessed need.

However, the NSW Government considers that the Productivity Commission needs to undertake further work on a number of foundation issues, such as: governance arrangements; funding mechanisms; the detail of the coverage; and the role of the non-government service sector in building community capability to support people with a disability.

The NSW Government recommends the Hunter Region as the most appropriate trial region for the NDIS.

NSW POSITION: Overview

The NSW Government welcomes the opportunity to comment on the draft Report by the Productivity Commission on Disability Care and Support and the proposed National Disability Insurance Scheme (NDIS) and National Injury Insurance Scheme (NIIS).

The NDIS is essential to ensuring that people with a disability have access to appropriate supports and certainty into the future.

The draft Report has confirmed that the current disability service system is complex, multilayered and difficult for people with a disability and their families and carers to navigate. It signals that significant changes are required to address the need for services by people with a disability and their families. It also projects that the cost of meeting demand for specialist disability services will reach levels unsustainable from within State and Territory government resources and a new source of funding is required. The NSW Government agrees with this assessment.

In broad terms the proposed NDIS is consistent with the reform directions of NSW's *Stronger Together 2*.

Stronger Together 2 provides a \$2 billion investment over five years to create an estimated additional 47,000 places. It is designed to be flexible in meeting the needs of people with a disability, their families and carers and to give them greater certainty of support and assistance. This investment is being used to transform the NSW specialist disability system to be built around the whole of a person's lifespan, and positioning people with a disability, their families and carers at the centre of decision making.

The NSW Government welcomes the recommendations of the Commission and views the proposed scheme as essential. It considers this to be a once-in-a-lifetime opportunity to fight hard for the futures of people with a disability in NSW.

However, there are some critical foundation issues to be addressed to ensure the support of the NSW Government, including:

- The NSW Government remains unconvinced that a National Disability Insurance Agency is preferable to a Federated model.
- **The intersection of mainstream services** such as education, housing and mental health: the proposed NDIS is reliant on continued and appropriate access and responses from mainstream service areas. The proposed schemes must not provide incentives for mainstream services to be diminished.
- Intersections between systems cannot be managed at a national level without recognition that disability service systems and mainstream services operate differently in each State and Territory. If the proposed NDIS is not focussed on transition management and working with the reality of the varied systems it will quickly become unworkable and unable to deliver appropriate outcomes for people with a disability.

- The effectiveness of the three tier model is premised on a combination of specialist disability services, intersections with mainstream service sectors, and capacity of the broader community. The ability of States and Territories to operate at the local level and foster community capability and build effective engagement and social inclusion must also be maintained.
- Access to employment is critical to achieving real social and economic independence. The intersection between State responsibilities in the education system, the Australian Government responsibilities for specialist employment and income support, and how supports and assistance will be provided under the NDIS requires greater consideration.

- Effective implementation of the three tier model and sustainability of the proposed NDIS will require a system that **builds capability and capacity** across whole communities. It is essential that the NDIS offers choice and individual control and determination of supports received. This includes the capacity for self directed decision making with regard to service provider. The Commission recognises that supports may be purchased from a variety of market options, including government providers, private for profit agencies and non-profit organisations. The draft Report does not suggest a preference for any particular market sector and suggests providers will compete for custom, and that this will serve to drive market capacity, quality and innovation.

NSW recommends the Commission undertake further work to ensure that any new Scheme promotes a viable and responsive not-for-profit disability service sector and builds community responsiveness.

- The important **role of the not-for-profit community care** agencies should be fully recognised, and indeed built on any reforms. The NDIS must maintain the social and economic benefits provided by not-for-profit organisations as service providers. The NDIS should be designed so that it provides the maximum support to the NGO sector and with care to avoid displacing the NGO sector.

It is important to maintain the current levels of community support through charitable and philanthropic arrangements. The investment of the NGO sector will be critical in building the work force skills and capacity to deliver the NDIS and achieve effective community inclusion. The NSW CareCareers model demonstrates the efficacy of a collaborative strategy between government and non-government agencies in building workforce capability.

A stronger NGO sector has the potential to improve the effectiveness of the transition to the NDIS particularly with the ambitious timelines proposed.

- The **design** of any new scheme must manage the intersections between service sectors and must not create incentives for cost transfer between levels of government.
- Further consideration needs to be given to strategies that support Tiers 1 and 2 to operate effectively. If these tiers work effectively there will be less reliance on Tier 3.

Consideration of all risks and mechanisms for management of risks, are:

- The intersection with mainstream service areas, particularly mental health education, and criminal justice and management of the intersection with aged care and primary health.
- The availability of appropriate aids and appliances across all tiers.
- Low level support responses at Tiers 1 and 2.
- Effective early engagement and non-government organisation partnerships that build community responsiveness and capability.
- These will all impact on cost, sustainability and ultimately enhance outcomes for the individual.

To ensure the support of the NSW Government and the sustainability of the Scheme, cost transfers acceptable to States and Territories and the above intersection issues need to be addressed and formally agreed by jurisdictions.

- The **sustainability** of the NDIS and the NIS requires effective early engagement with low intensity responses that can offset potential high cost future care. This approach must not be limited to early life stages but transition points across a person's life. The approach should identify where opportunities exist for people to build on their strengths and participate and contribute to their communities. This will provide greater certainty about what individuals and their families should expect from the specialist and mainstream service systems and ensure greater capacity to engage in life-long planning.

The NSW Government supports the approach to early engagement outlined in the draft Report but the Commission should also consider mechanisms for identifying and supporting people with low intensity support needs, to ensure their continuing community participation as a means of ameliorating need for higher levels of support.

- A commitment to **person directed** supports is not dependent on the take up or capacity for individual management of funding. A system which is driven from the perspective of the individual is immediately achievable. Further work by the Commission is required to ensure appropriate levels of decision making support as early as possible. NSW under *Stronger Together* is seeking to ensure that by the end of 2013/14 anyone receiving disability services will have the option of using an individualised and portable funding arrangement.
- The proposal for a **separate scheme** for specialist disability support and for catastrophic injury recognises the complex legislative issues involved and provides a clear separation of responsibility for appropriate injury prevention and management. There is, however, concern regarding the potential for cost shifting between the Schemes and for people to seek access to whichever Scheme is perceived as the more favourable or provides greater benefits. This could occur due to the Schemes having different funding sources and eligibility criteria and potentially different entitlements. The Commission needs to further consider how these boundary issues should be managed to ensure the continued sustainability of both Schemes.

The NSW Government does not support the hypothecation of State taxes or local government rates at this time. Dedicated taxes are often subject to unexpected shortfalls and surpluses. This may create political pressure to adjust the tax, to budget non-dedicated revenues instead, or to reallocate surplus funds to other purposes. It is recommended the Commission undertakes further work to identify new revenue sources to finance no-fault insurance for catastrophic injury where these are not already covered.

In supporting the NDIS and NIIS, the **NSW Government recommends the Hunter Region** as the most appropriate trial region for the NDIS, due to its population size and mix of rural and metropolitan settings; and the existence of a current single access point for community care. This recommendation is covered in greater detail in Attachment A of this document.

NSW RESPONSES TO DRAFT RECOMMENDATIONS OF THE PRODUCTIVITY COMMISSION

The sections above set out the NSW Position and consideration of the Productivity Commission’s draft Report, including the nomination of the Hunter region for the proposed trial of the NDIS.

The NSW Government agrees in principle with, and supports, the tenor of the recommendations of the Commission’s draft Report. The recommendations and the proposal for the NDIS are largely in accord with the directions of the NSW initiative *Stronger Together*, particularly the emphasis on individualised planning and funding and introducing an approach that is person-centred and builds strong links to mainstream service systems.

The following table provides a more detailed consideration of the draft Report’s recommendations. The table:

- Notes areas where NSW considers further work or detailed information is required either in the development of the Final Report or during transition.
- Highlights areas where NSW has examples of practice that could be considered by the Commission in undertaking further analysis.
- Provides additional information and questions for the Commission to consider in preparing its final Report.

Draft recommendations by the Productivity Commission	NSW Government comments
<p>3.1 The National Disability Insurance Scheme (NDIS) should have three main functions:</p> <ul style="list-style-type: none"> • to cost-effectively minimise the impacts of disability, maximise the social and economic participation of people with a disability, and create community awareness of the issues that affect people with disabilities. These measures should be targeted at all Australians • to provide information and referral services, which should be targeted at people with, or affected by, a disability • to provide individually tailored, taxpayer-funded support, which should be targeted at the subset of people with disabilities who are assessed as needing such support. 	<p>NSW, through <i>Stronger Together 2</i>, is seeking to address service demand and reform the way services are delivered in order to provide social and economic benefits for people with a disability and their families. However, the State does not have the financial capability to deliver the level of reform and support required to fully address all individuals’ needs beyond the <i>Stronger Together 2</i> period.</p> <p>As stated above in this paper, the NDIS must be open to all people with a disability and support all current service users to at least their current level of service. It must provide the full range of supports that people with a disability require without substituting for mainstream services.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>In order to ‘cost-effectively minimise the impacts of disability, (and) maximise social and economic participation’ considerable further work by the Commission is required to:</p> <ul style="list-style-type: none"> • reinforce the fundamental value of employment as a first option for all people with a disability. This requires further articulation by the Commission of the relationship between employment services and the proposed NDIS, and to ensure that the NDIS does not create disincentives for effective employment solutions • affirm that the role for not-for-profit community care agencies will be preserved in any reforms. The contribution of the non-profit sector is critical in building community capability and increasing community awareness and responsiveness to people with a disability. <p>The NDIS must use an early engagement approach, at key points throughout a person’s life as this has the capacity to negate or delay the need for higher cost support options and thus develop a more cost effective system.</p> <p>As an example of this, the NSW Lifetime Care and Support Authority has developed pilot projects to improve workforce and community participation. These projects are based on evidence that higher levels of participation reduce the demand for care.</p>
<p>3.2 Individuals receiving individually tailored, funded supports should be Australian residents, have a permanent disability, (or if not a permanent disability, be expected to require very costly disability supports) and would meet one of the following conditions:</p> <ul style="list-style-type: none"> • have significant difficulties with mobility, self-care and/or 	<p>The target groups proposed in the recommendation may not fully cover all people with a disability who should be considered appropriate for support from an NDIS. This particularly relates to concerns with the definition of ‘significant difficulties’ and the ‘early intervention group’.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>communication</p> <ul style="list-style-type: none"> • have an intellectual disability • be in an early intervention group, comprising: <ul style="list-style-type: none"> – those for whom there was a reasonable potential for cost-effective early therapeutic interventions (as in autism and acquired brain injury) – those with newly diagnosed degenerative diseases for whom early preparation would enhance their lives (as in multiple sclerosis) • have large identifiable benefits from support that would otherwise not be realised, and that are not covered by the groups above. Guidelines should be developed to inform the scope of this criterion. 	<p>It is vital that the NDIS has the capacity to provide the required level of support for all appropriate target groups, including people with low support needs. Meeting these needs may negate or delay the future need for higher costs supports.</p> <p>The NDIS must also include people with a disability who are currently receiving a low-level support that enables them to participate in employment and to access their community.</p> <p>The inclusion of this group will ensure that these people are able to maintain their employment and community access and that their needs also do not escalate to high-cost support options.</p> <p>The eligibility criteria specified by the Commission may result in some groups or individuals with a disability being omitted.</p> <p>The Commission needs to describe the conditions that would benefit from an early intervention approach as examples rather than as an exhaustive list. The Commission should also include a criterion that encompasses an assessment of the impact of not intervening.</p> <p>Other aspects of the recommendation requiring further work are:</p> <ul style="list-style-type: none"> • The reference to ‘expected to require very costly disability supports’ needs further explanation. This criterion should clarify whether these supports are current or will occur in the future, especially in the absence of early engagement. • To consider the use of ‘long term’ rather than ‘permanent’. • To consider the inclusion of ‘episodic disability’ so that individuals with multiple sclerosis or similar conditions would be included. • To clarify the scope of ‘Australian Resident’, particularly relating to its potential impact on support services for children.

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>A recent anti-discrimination case has drawn attention to the fact that the attempt to define this term relying on the provisions of the <i>Migration Act 1958</i> (Cwth) or the <i>Social Security Act 1991</i> (Cwth) has the potential to discriminate against a significant class of residents (<i>Faulkner v ACE Insurance Limited</i> [2011] NSWADT 36).</p> <p>In NSW, the ADHC Intake Policy states 'clients must be permanent residents of Australia and residing in NSW', although the target group definition in the <i>Disability Services Act 1993</i> (NSW) does not impose such a limitation for directly provided or funded services.</p> <p>Unless the class of potential recipients is clearly defined in terms of desired outcomes rather than definitions geared to the migration system, there is potential for both unfair exclusion and exploitation of the residency qualification by people who are not living in Australia.</p>
<p>3.3 The NDIS should provide advice to people about those instances where support would be more appropriately provided through non-NDIS services. Support should be provided outside the NDIS for people whose:</p> <ul style="list-style-type: none"> • disability arose from a workplace accident or catastrophic injury covered by insurance premiums • support needs would be more appropriately met by the health and/or palliative care systems, comprising: <ul style="list-style-type: none"> – those who would benefit from largely medically oriented interventions (including less restrictive musculoskeletal and affective disorders, and many chronic conditions) – many people with terminal illnesses • support needs would be more appropriately met by the aged care system • needs were only in relation to mainstream employment, public housing or educational assistance. 	<p>Ensuring that the intersections with injury compensation schemes and with health, aged care and other mainstream sectors operate effectively will require agreements on the maintenance of effort required of all jurisdictions. This will require agreement through Council of Australian Governments (COAG) processes.</p> <p>The Commission in its final Report should outline the heads of agreement that it would expect to see in such National Agreements or Partnerships.</p> <p>The implementation of the National Disability Strategy (NDS) has the potential to strengthen the access of people with a disability to mainstream services. The Final Report by the Commission should consider how the NDS could be effective in establishing the maintenance of effort required by mainstream services to provide the appropriate non-NDIS services.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>3.4 The NDIS should put in place memoranda of understanding with the health, mental health, aged and palliative care sectors to ensure that individuals do not fall between the cracks of the respective schemes and have effective protocols for timely and smooth referrals.</p>	<p>The development of comprehensive memoranda of understanding (MOU) is vital to minimise the chances of gaps between the various systems and to ensure that people can transfer easily from one sector to another.</p> <p>In NSW, MOU currently exist between a number of agencies, for example NSW Health has in place (or is in the process of developing) a number of MOU with other NSW and Australian Government Departments including a MOU between ADHC and NSW Health regarding the provision of services to people with an intellectual disability and a mental illness.</p> <p>The Commission should also consider options for MOU with the housing, community services and employment training sectors.</p>
<p>3.5 Whatever the actual funding divisions between the NDIS and aged care that are put in place, people should have the option of migrating to the support system that best meets their needs, carrying with them their funding entitlement.</p> <p>Upon reaching the pension age (and at any time thereafter), the person with the disability should be given the option of continuing to use NDIS-provided and managed supports or moving to the aged care system.</p> <p>If a person chose to:</p> <ul style="list-style-type: none"> • move to the aged care system, then they should be governed by all of the support arrangements of that system, including its processes (such as assessment and case management approaches) • stay with NDIS care arrangements, their support arrangements should continue as before, including any arrangements with disability support organisations, their group accommodation, their case manager or their use of self-directed funding. 	<p>The Productivity Commission recommendation is consistent with NSW’s position on the aged care and disability reform components of the COAG National Health and Hospitals Network (NHHN) Agreement.</p> <p>NSW is working with the Commonwealth, States and Territories to ensure implementation of the NHHN Agreement reforms includes protocols that support continuity of client care and seamless transfers between service systems, underpinned by a commitment to client choice to receive ongoing care in place.</p> <p>The Commission will need to consider the impact of the different age base between the NHHN Agreement (age 65) and the pension age (scheduled to rise to 67 years) when looking at intersections with the aged care system. The Commission also needs to consider the impact of differing thresholds on the NDIS.</p> <p>Under the NHHN Agreement, the Commonwealth will assume funding responsibility for aged care, basic community care and specialist disability services for Indigenous people from age 50 years, compared to age 65 years for non-Indigenous people.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>Either way, after the pension age, the person with a disability should be subject to the co-contribution arrangements set out by the Commission in its parallel inquiry into aged care. If a person over the pension age required long-term aged residential care then they should move into the aged care system to receive that support.</p> <p>In implementing this recommendation, a younger age threshold than the pension age should apply to Indigenous people given their lower life expectancy, as is recognised under existing aged care arrangements.</p>	<p>A consistent age threshold for aged care and disability arrangements is required to facilitate these arrangements. The lower threshold for Indigenous people is in place in recognition of their lower life expectancy.</p> <p>If a person chooses to stay with NDIS care arrangements upon reaching pension age, the scheme will need to ensure that both their disability and age-related support needs are met.</p> <p>The Scheme will also need to address the age-related needs that sometimes arise in people with a disability prior to pension age.</p> <p>The Commission may need to consider some additional impacts for directly funded clients - their ability to manage Direct Funding may need to be reviewed more regularly as they age to determine whether they continue to be able to manage the funding within guidelines and to fulfil reporting requirements.</p> <p>This issue has arisen in NSW with some Attendant Care Program (ACP) Direct Funding clients. For some, however, the difficulty in continuing self management of funding has not been as a result of ageing but as a result of changes in the disabling condition.</p>
<p>3.6 Following the transition spelt out in draft recommendation 17.1, the NDIS should fund all people who meet the criteria for individually tailored supports, and not just people who acquire a disability after the introduction of the scheme.</p>	<p>The NDIS must be open to all people with a disability. It must support all current service users to, at least, their current level of support and should focus initially on people with the greatest needs.</p> <p>In the longer term, the intake process for the NDIS must be able to identify and support all people with a disability who may have initially been fully supported by their family or other carers to the extent that they need additional formal support if their support needs change or the capacity of their carers change.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>3.7 The supports to which an individual would be entitled should be determined by an independent, forward-looking assessment process, rather than people’s current service use.</p>	<p>There are significant benefits both for the NDIS and for participants in an approach that incorporates an independent forward-looking assessment process. This approach provides greater certainty of future service options for people with a disability and increases capacity for confident longer term planning.</p> <p>Independent assessors are used effectively in personal injury insurance environments (e.g. Motor Accidents Compensation Scheme, Lifetime Care and Support Scheme, WorkCover NSW and similar systems in other jurisdictions). Independent assessors are used effectively to mitigate risks associated with cost escalation and under-provision of support to clients.</p>
<p>4.1 The NDIS should cover the current full range of disability supports. The supports would need to be ‘reasonable and necessary’. The NDIS should also support the development by the market of innovative support measures (using the approaches set out in draft recommendation 8.3).</p>	<p>The NDIS should cover the full range of current disability supports but should also be sufficiently flexible to ensure that providers can be innovative and provide supports that may be outside the range of current supports. This should not include services that would be expected from mainstream services.</p> <p>One of the biggest potential impacts of the proposed NDIS is its capacity to reform service delivery from a service type, welfare based approach to the delivery of supports tailored to the needs and interests of an individual and that enables their full participation in everyday life. It is essential that the initial design of the NDIS moves from the current programmatic and service type structure.</p> <p>For people who need episodic support, the Commission may need to consider including paid informal support (including supports by carers and friends) under some circumstances to ensure an appropriate and timely response.</p> <p>The term ‘reasonable and necessary’ needs to be more clearly defined prior to any pilot phase of the Scheme.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>The experience of NSW disability support programs (especially in relation to assistive technology) is that loose definitions of what is covered have the potential to lead to inequities, especially if the definitions are interpreted by a range of different service providers.</p> <p>The ‘trained’ assessors referred to in the draft Report would need clear guidelines to ensure that recommendations conformed to the ‘reasonable and necessary’ criteria.</p> <p>As part of the quality reforms to its assistive technology program – Program of Appliances for Disabled People (PADP) - NSW Health has undertaken a consultative project with expert prescribers and other stakeholders to develop Provision and Prescription Guidelines which attempt to address what should be provided through the state equipment scheme.</p> <p>In developing innovative service models, lessons may be learned from a current NSW example of a service supporting nationally consistent standards and the promotion of best practice. The Home Modification Information Clearing House is managed by a multi-disciplinary team from backgrounds including industrial design, sociology, gerontology, law, architecture and occupational therapy. It provides a web-based facility that supports home modification decision-making for the full range of industry and consumer target groups¹.</p>
<p>4.2 There should be no income or assets tests for obtaining funded NDIS services.</p>	<p>The NDIS should be open to all people with a disability at the point of determining eligibility. Entitlement to a funded support package should then be determined after an assessment of need without reference to income or assets of the individual or their family. In the same way as with Medicare, people with a disability or their family or carers should then be able to purchase and pay for supports beyond their allocated funding package if they wish to and can afford to do so.</p>

¹http://www.homemods.info/about_us -- accessed 21 April 2011

Draft recommendations by the Productivity Commission	NSW Government comments
<p>4.3 There should sometimes be a requirement to pay a modest fixed upfront contribution to the NDIS, with free access to services after that point. The NDIS should waive the amount where families have already contributed significantly towards the costs of support through unpaid care.</p>	<p>The recommendation to waive the front-end deductible for families and carers who provide a significant contribution to the care for the person with a disability is consistent with existing service access principles. The Commission should also consider circumstances where inability to pay may also warrant fee waiver regardless of the level of family contribution.</p> <p>The Commission needs to undertake further consultation with carers and funding bodies on how this might work in practice. The Commission in its final Report needs to consider: how the level of contribution will be determined; who pays a contribution; and what constitutes a 'significant contribution' by carers.</p> <p>The Commission should also consider whether the level of contribution should be tapered so that different levels or forms of support are recognised and carers are encouraged to maintain or increase their caring effort.</p>
<p>4.4 People should pay the full costs of services (primarily therapies) for which clinical evidence of benefits are insufficient or inconclusive if they wish to consume those services.</p>	<p>Consideration needs to be given to the parameters of therapy support under the NDIS to ensure sufficient flexibility to respond in a person-centred way to the needs of people with a disability.</p> <p>Further research would need to be conducted and criteria specified to outline the services for which there is sufficient clinical evidence of benefits, and which services have insufficient or inconclusive evidence of benefits. Care will need to be taken with regard to emerging therapies where time will be required before clinical evidence of the benefits or otherwise can be established.</p> <p>There is already some work being done by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) concerning this issue in relation to the Autism Package.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>FaHCSIA has commissioned a review by the Australian Autism Research Collaboration of autism interventions funded under the Helping Children with Autism Package.</p> <p>This review seeks to:</p> <ol style="list-style-type: none"> 1. Provide a comprehensive list of autism interventions based on the latest evidence based research. 2. Provide a basis for appropriate assessment by FaHCSIA of provider applications. 3. Note concerns raised by families and practitioners, based on feedback from peak bodies, about current practices and ineligible interventions. 4. Develop a process for FaHCSIA to ensure that children are receiving effective evidence based interventions and that families are able to make more informed decisions about available interventions. <p>It is suggested that the Commission seek further information from FaHCSIA concerning this work.</p>
<p>4.5 Services that meet the needs of much wider populations, including people with disabilities not covered by the NDIS, should lie outside the scheme:</p> <ul style="list-style-type: none"> • health, public housing, public transport and mainstream education and employment services, should remain outside the NDIS, with the NDIS providing referrals to them <ul style="list-style-type: none"> – but specialised employment services, disability-specific school to work programs, taxi subsidies, and specialised accommodation services should be funded and overseen by the NDIS. 	<p>The NSW Government believes that promoting fairness and opportunity for all citizens requires that people with a disability are enabled to have their needs met, as far as possible, through services available to the broader population. This will also ensure the long term sustainability of the NDIS.</p> <p>There should, however, be effective processes to facilitate referrals both to and from mainstream services and the NDIS.</p> <p>This recommendation aligns with the move that NSW has taken under <i>Stronger Together</i> and the current work to increase employment opportunities to enable as many people with a disability as possible to have the ability to work. Specialised employment programs (including school to work) that aim to prepare a person to take advantage of mainstream employment services should be funded and overseen by the NDIS as they are consistent with the intents of this scheme.</p>

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	<p>The NDIS should not preclude a person with a disability the opportunity to work and the framework will need to be drafted to ensure that unintended barriers and disincentives to work are minimised.</p> <p>For example, the Commission should consider the NDIS allowing someone with a disability to maintain funding for support (personal care, transport, community engagement, skills development programs, accommodation support) whilst working.</p> <p>In relation to the specialised accommodation services, the Commission needs to consider the transition from the current system’s significant investment in specialist accommodation facilities where accommodation and support are combined.</p> <p>A further issue that the Commission may wish to consider is where people with a disability are living in licensed boarding houses regulated by the States and Territories. This may require an MOU or complementary legislation by jurisdictions.</p>
<p>4.6 The Disability Support Pension (DSP) should not be funded or overseen by the NDIS. The Australian Government should reform the DSP to ensure that it does not undermine the NDIS goals of better economic, employment and independence outcomes for people with disabilities. Reforms should aim to:</p> <ul style="list-style-type: none"> • encourage the view that the norm should not be lifelong use of the DSP, among: <ul style="list-style-type: none"> – people with non-permanent conditions – people with permanent conditions who could have much higher hopes for employment participation • provide incentives for people to work (even if only for a few hours per week) and for targeted rehabilitation for those with reasonable prospects of employment. <p>These reforms should not be limited to new entrants into the DSP</p>	<p>This is viewed as a critical recommendation. The DSP should not be funded through the NDIS as it is an income support program rather than a disability support system. Reforms to the DSP need to be made in parallel to reforms to the specialist disability employment services, to ensure that these services are more effective in building opportunities and supporting people with a disability in the labour force.</p> <p>A lack of cohesion between the income support program and the employment support programs means that the DSP can act to provide economic disincentives for people with a disability to work. For example, DSP withdrawal rate starts when a person earns \$73 per week. People working in an Australian Disability Enterprise (ADE) are also ineligible for the higher mobility allowance rate.</p>

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	<p>There is also a need to resolve transport to work issues, with the cost of getting to work for a lot of people with a disability being a significant disincentive. The Mobility Allowance is not adequate in most cases to access employment and other services. The Commission’s draft Report has recognised the transport issues.</p> <p>Inflexible program boundaries can also hinder employment opportunities. Under current rules, a person who is working at, or above, their assessed working capacity at an ADE cannot also be registered with a Disability Employment Service (DES). This hinders possible movement to open employment and a career.</p> <p>Employment services need be person-centred and to focus on careers not just job placement. A person with a disability should have the option to move through a supported employment setting and into the open market with support and be able to access further support when needed.</p> <p>Greater participation by people with a disability in the labour force has the potential to provide significant savings which could contribute to the funding of the NDIS. The implementation of the NDIS could also mean a change in role for some carers so that they are able to work. This would, in turn, lead to savings against the Carer Payment.</p>
<p>5.1 Working within the International Classification of Functioning, Disability and Health (ICF), the assessment process should identify the supports required to address an individual’s reasonable and necessary care and support needs across a broad range of life activities, and should take account of an individual’s aspirations and the outcomes they want to achieve.</p>	<p>The establishment of an assessment process founded on the ICF is supported. It is noted that, currently, there is no single accepted assessment tool. Accordingly, further work is required on the development of an effective tool(s).</p> <p>Disability Services Ministers, at their meeting on 19 April 2011, agreed to pursue common assessment tools for consideration across State, Territory and Commonwealth programs and services to support continued momentum in reform of disability services nationally. This will link into the work required for the establishment of the NDIS.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>5.2 The assessment process should be a valuable intervention in its own right, rather than just an entry point to supports. The process should:</p> <ul style="list-style-type: none"> • draw on multiple sources of information, including: <ul style="list-style-type: none"> – information provided by the individual with a disability, including their aspirations and requirements for supports – information provided by unpaid carers – current medical information on the person with a disability • assess the nature, frequency and intensity of an individual’s support needs. The process should be person-centred and forward looking and consider the supports that would allow a person to achieve their potential in social and economic participation, rather than only respond to what an individual cannot do • determine what supports outside the NDIS people should be referred to, including referrals to Job Network providers and mental health services • consider what reasonably and willingly could be provided by unpaid family carers and the community (‘natural supports’) • translate the reasonable needs determined by the assessment process into a person’s individualised support package funded by the NDIS, after taking account of natural supports • provide efficiently collected data for program planning, high level reporting, monitoring and judging the efficacy of interventions. 	<p>The proposal to include a self report has the potential to assist in creating a person-centred process.</p> <p>Development of the assessment process however will need to consider the weighting given to the self report.</p> <p>An issue will be how ‘reasonably and willingly’ will be defined and assessed. People may be less willing to support a family member with a disability if they think that they are able to ‘opt out’ of caring and have all supports provided by the NDIS. This assessment needs to also consider the cost benefit of ‘reasonably and willing’ particularly where this comes at the expense of the carer’s capacity to engage in employment or other appropriate community activities.</p> <p>Subject to privacy considerations, the assessment process could be the start of a continuous client record which can be used to minimise the need for individuals and families to retell their story or undergo multiple assessments.</p> <p>It could also provide aggregate information on client characteristics, changes in need over time, and changes in support over time which can be used for planning and evaluation purposes.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>5.3 Any tools employed by the scheme should exhibit validity and reliability when used for assessing the support needs of potential NDIS users. The preferred assessment tools should be relatively easy to administer and exhibit low susceptibility to gaming. The toolbox should be employed nationally to ensure equitable access to nationally funded support services (and allow portability of funding across state and territory borders when people move).</p>	<p>Consultation would need to occur with a range of stakeholders e.g. people with a disability, carers, State and Territory governments and NGOs to develop the tools.</p> <p>The Commission also needs to consider the extensive work that has been done through the Access Points Pilot in the community aged care sector to guide assessment of functional and carer needs.</p>
<p>5.4 Trained assessors should undertake assessments. To promote independent outcomes, assessors should not have a longstanding connection to the person.</p> <p>Assessors' performance should be continually monitored and assessed to ensure comparability of outcomes and to avoid 'sympathetic bracket creep'.</p>	<p>The Productivity Commission, in its final Report, needs to provide more detail on this matter as external assessment processes may increase the overall cost of the scheme. The Commission will also need to consider mechanisms to assess the performance of assessors – internal, external or a combination of the two.</p>
<p>5.5 The NDIS should periodically reassess people's need for funded support, with a focus on key transition points in their lives.</p>	<p>The Commission, in its final Report, should clearly articulate when and under what circumstances a reassessment would take place. The agreed personal plan could include a forward plan for reassessment based on known key transition points/life stages. The NDIS should however be responsive to an individual's request to be reassessed if they, or their carer's, circumstances change.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>5.6 Where an informal carer provides a substantial share of the care package, they should receive their own assessment. This should seek to identify their views on the sustainability of arrangements and the ways in which they could be supported in their role, including through the initiatives recommended in draft recommendation 13.3.</p>	<p>This recommendation is in keeping with both <i>Stronger Together</i> and current initiatives which enable the provision of support to parents, such as counselling and training (e.g. Extended Family Support), in order to mitigate or delay the need for long term intensive support options.</p> <p>NSW has recently enacted legislation to recognise the valuable contribution of carers. The <i>NSW Carers (Recognition) Act 2010</i> establishes the NSW Carers Charter which provides for the assessment of carer needs and referral where appropriate.</p> <p>The Charter also recognises that carers will have individual needs, both within and outside of their caring role. Any assessment should be a genuine reflection of those needs and not just of the carer’s ability to sustain their caring role.</p>
<p>6.1 Governments should give people with disabilities eligible for benefits under the NDIS, or their nominated proxies, various options for exercising choice, including the power to:</p> <ul style="list-style-type: none"> • choose directly the service provider/s that best meet their needs • choose disability support organisations that would act as intermediaries on their behalf when obtaining services from service providers, and/or • ‘cash out’ all or some of their individual budgets if they wish, with the NDIA making direct payments to their bank accounts, and allowing people to purchase directly the detailed package of supports that best meets their preferences (‘self-directed funding’), subject to the constraints set out in draft Recommendations 6.2, 6.7 and 6.8. <p>The specific arrangements for self-directed funding should be underpinned by the principle that, subject to the assessed individual budget and appropriate accountability requirements, the arrangements should maximise the capacity for a person to choose the services that meet their needs best and that promote their participation in the community and in employment.</p>	<p>The person-centred approach proposed by the Commission for the NDIS, including person driven decision making and local co-ordination, is consistent with major directions in NSW under <i>Stronger Together</i>.</p> <p>The Commission however needs to consider whether this must involve individualised funding packages for all people involved in the Scheme. The person-centred approach can occur with appropriate decision support resources under a block funded model with service choices driven by people with a disability and their families. The Scheme could move at a later date to individualised packages as the capacity of individuals for funds management develops.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>6.2 Self-directed funding should include the following key stages:</p> <ul style="list-style-type: none"> • It would be informed by any prior planning and aspirations expressed by the person during the assessment phase (draft recommendation 5.2). • The individual budget for self-directed funding would be based on the formal individual assessment of the person’s needs and would include the cashed out value of all goods and services covered by the NDIS, except those where specialist knowledge is required for informed choices. • The person with a disability and/or their support network or chosen disability support organisation would create a personal plan and a concrete funding proposal to the NDIA that outlines the person’s goals and the type of support that is necessary and reasonable to achieve these within the allocated budget. • The resulting funding proposal would require approval by the National Disability Insurance Agency (NDIA). <p>There should be a capacity for a person to:</p> <ul style="list-style-type: none"> • obtain quick approvals for changes to a funding proposal • add their own private funds to a funding proposal • allocate the individual budget to any mix of preferred specialist and mainstream goods and services, subject to the requirements that: <ul style="list-style-type: none"> – the person spend the budget in areas related to his or her disability needs and consistent with the funding proposal – the scope to cash out funds set aside for large non-recurrent spending items should be limited to the (rare) circumstances where the NDIA has approved this as an appropriate decision. 	<p>The proposal by the Commission for individual funding packages is consistent with a number of NSW direct funding models, such as the ACP Direct Funding Model² and the Self Managed Model for Day Programs³.</p> <p>The term self-directed funding needs to be clearly defined. Self directed funding may, in some instances, refer to funding managed by an intermediary.</p> <p>The NSW ACP Direct Funding Model provides evidence for a number of the recommendations in Chapter 6 of the draft Report. For information on this Model please refer to the Guidelines and to the ACP Direct Funding Model summary in the additional information section of this paper.</p> <p>It is suggested that the agreed personal plan (with associated outcomes) and associated funds plan is the basis for all services and support (purchased or otherwise). All spending must be related to these plans.</p> <p>It is recommended that the Commission consider trialling the review of funding proposal mechanisms before this is formally included as a key element to self-directed funds management. Review processes, such as that proposed, add further red tape which may ultimately slow down the delivery of services and supports.</p> <p>The Commission might also need to consider mechanisms for interim supports being available for individuals who are in crisis due to sudden changes in their disabling condition or their carer supports while planning and funding approval processes are completed.</p>

²http://www.dadhc.nsw.gov.au/NR/rdonlyres/F2249DF5-BB20-412E-8513-FED30662FFD9/4229/ACPDirectFundingModelGuidelinesV10_final.pdf - accessed on 14 April 2011

³<http://www.dadhc.nsw.gov.au/NR/rdonlyres/3F01AEC6-D463-4781-B855-41497FDC741E/4765/LifeChoicesProgramGuidelinesrevisedSeptember2009.pdf> - accessed on 14 April 2011

Draft recommendations by the Productivity Commission	NSW Government comments
<p>6.3 The NDIA should pay annual allocations of self-directed funding in monthly instalments paid in advance, with the capacity for the person to 'bank' up to 10 per cent of the annual allocation to the subsequent year.</p>	<p>Payment by monthly instalments in advance is in line with the method used in the ACP. In NSW, funding for the Self Managed Model in Day Programs is paid retrospectively (on a monthly basis), which is the cause of concern for some families.</p> <p>Regarding the banking of allocations, the allowable rate varies across programs and jurisdictions.</p> <p>NSW Self Managed Model for Day Programs allows banking of hours; the amount must be mutually agreed between the person with a disability and their service provider. The guideline about unspent funds is:</p> <p><i>'You may spend less money because you received less service hours than allocated (e.g. interruption of services due to hospitalisation, improvement in your condition) or because you used the funds more efficiently. Unspent funds are returned to ADHC at the end of each financial year or at time of exit from the program. Funds recovered by ADHC are returned to the ACP fund base and allocated to other clients.</i></p> <p><i>Alternatively if you do not spend all funds in one financial year ADHC may give you the option to purchase other support services related to the disability in the following financial year.</i></p> <p><i>Surplus funds may be approved to assist in maintaining independence in the home or community, quality of staff or for supports that assist in managing the direct funding model. These funds will be treated as a one-off allocation. If you choose this option you will need to submit a proposal to ADHC with details or quotes'. (ACP Direct Funding Model Guidelines, Sept 2008)</i></p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>6.4 There should be a capacity for people to recruit and employ their own support workers, subject to the proviso that these should not be close family members, other than when:</p> <ul style="list-style-type: none"> • care is intermittent and provided by a non-resident family member • exceptional circumstances are present and after approval by the NDIA • the person is in the family employment trial spelt out in draft recommendation 6.5. 	<p>It is suggested that family and friends may be employed provided they do not live in the household. Consideration should be given to the needs of CALD and Aboriginal families and those living in rural and remote areas, who are restricted by choice and cultural expectations and therefore may need to rely on family members for indefinite periods of time. These are exceptional circumstances and should be approved.</p>
<p>6.5 There should be a trial of the employment of family members under self-directed funding to assess its risks, advantages, disadvantages and optimal design, with its wider adoption if the evaluation proves positive. The trial should use an appropriately rigorous scientific approach, drawing on the evaluations used in the United States ‘Cash and Counseling’ programs. For the trial:</p> <ul style="list-style-type: none"> • the NDIA should determine that there are few risks from hiring relatives for each family in the trial • the individual budget should be discounted by 20 per cent • support should be initially limited in duration to six months, with continuation of any arrangement for a given family based on the benefits and costs to that family • risks should be carefully managed to ensure appropriate use of funds and to safeguard people with disabilities and carers (draft recommendation 6.8). 	<p>It is assumed that the discounting recognises that family members do not incur overheads etc as per formal service providers. The impact of the discounting should be assessed in the trial.</p> <p>The Commission’s Final Report and the trial will need to address the issue of how payments to family members are treated for the purposes of taxation (are they treated as income for those family members?) and for the determination of Centrelink benefits.</p> <p>This is a separate issue to that of the income tax issues for the person receiving the support package raised in recommendation 6.10.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>6.6 The NDIA should:</p> <ul style="list-style-type: none"> • inform people with disabilities and their proxies of the various options for self-directed funding • provide support for people using self-directed funding, including easy-to understand guidance about the practical use of self-directed funding, including standard simple-to-follow forms for funding proposals, hiring employees and for acquittal of funds • promote the use of self-directed funding, with examples of innovative arrangements • provide training to local case managers and front-line staff about self-directed funding • encourage the formation of disability support organisations to support people in the practical use of self-directed funding. 	<p>The ‘various options for self-direct funding’ requires further clarification - the draft Report suggests only one option, ‘direct payment’.</p> <p>Evaluations of current individualised support programs in ADHC advocate the need for:</p> <ul style="list-style-type: none"> • Information (so informed choices on the various funding models can be made); and • Clear guidelines about what can and cannot be purchased. <p>The Commission may need to consider mechanisms for people to opt in at a later stage or opt out of self directed funding, this needs to also include mechanisms for temporary opt out related to episodic conditions.</p> <p>The NDIS must ensure that people with a disability and their families have access to suitable information and support in order to be able to fully exercise their decision-making options.</p>
<p>6.7 Before offering self-directed funding to a person, the NDIA should:</p> <ul style="list-style-type: none"> • meet with the person with a disability and their carers, and take account of their experience and skill sets • use that and any information provided during the assessment phase to determine whether the person and/or their support network are likely to be able to: <ul style="list-style-type: none"> – make reasonably informed choices of services – manage the administrative and financial aspects of funding if they wish to oversee these aspects by themselves. 	<p>Eligibility for direct funded programs in Australian jurisdictions varies. While some have little criteria, others cite the ‘capacity to self-manage’. The draft Report does not consider the indicators of ‘capacity’.</p> <p>If clear, detailed accurate and up to date information is provided on the funding models (including roles and responsibilities of people with a disability, families and carers) the majority will self-select appropriately. Where information is not clear, there is the risk of poor and inappropriate selection.</p> <p>People with a disability, families and carers who have had some experience with the disability sector are predisposed to take advantage of a direct payment model. Families with a young child recently diagnosed may be less likely to adopt a direct payment method (a host organisation is likely to be their choice).</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>6.8 In offering self-directed funding, the NDIA should ensure that:</p> <ul style="list-style-type: none"> • it reduces the risks of neglect or mistreatment of people with a disability by support workers or other service providers hired by users in the informal sector, by: <ul style="list-style-type: none"> – ensuring easy and cheap access to police checks – giving users the capacity to complain to the NDIA about inappropriate behaviour of providers, and to have these investigated – monitoring by local case managers • it reduces the risks to support workers employed under self-directed funding by requiring that they are covered by workers’ compensation arrangements and have an avenue for lodging complaints • it adopts a risk-management approach for receipting and other accountability requirements, which: <ul style="list-style-type: none"> – requires less accountability for people with low risks or who have demonstrated a capacity to manage their funds well – takes into account the compliance costs of excessive accountability measures – allows a small component of the individual budget to be free of any receipting requirements. 	<p>The risk management approach to accountability for individuals receiving direct funding is consistent with commitments of all governments to reduced regulatory burden and cutting red tape.</p> <p>Excessive compliance requirements should be avoided and should not replicate those currently in place for service providers.</p> <p>Further detail regarding the support that will be available to enable people with a disability to access self-directed funding and undertake their own decision-making processes is required.</p>
<p>6.9 The NDIA should undertake ongoing monitoring of self-directed funding arrangements, with a quarterly report to the board of the NDIA on issues arising from self-directed funding. There should be a full evaluation three years after their commencement to assess any desired changes in their design.</p>	<p>The National Disability Insurance Authority (NDIA) must ensure monitoring arrangements are streamlined and do not create an administrative burden for families and providers. Evaluation of self directed funding arrangements should build on existing national and international evaluations.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>6.10 The Australian Government should amend the Income Tax Assessment Act 1936 and the Social Security Act 1991 so that the following are not treated as income for assessment of taxes or eligibility for income support or other welfare benefits:</p> <ul style="list-style-type: none"> • self-directed funding paid by the NDIA and, in the interim, by state and territory governments • early compassionate release of eligible superannuation amounts for disability expenditures which meet the criteria set down by the Superannuation Industry (Supervision) Act 1993. 	<p>The jurisdictions of Victoria, NSW and SA have sought rulings from the Australian Tax Office (ATO) and FaHCSIA for direct payment programs.</p> <p>The NSW ACP liaised with the ATO during the planning of the Direct Funding Model to ensure that funds provided to clients were not assessed as income. The ACP also liaised with Centrelink to ensure that Direct Funding clients were not disadvantaged or made ineligible for other benefits as a result of receiving a direct payment for their ACP approved hours.</p> <p>NSW is presently seeking a ruling to apply across all ADHC programs. A national ruling would be beneficial.</p>
<p>7.1 The Australian Government should establish a new independent Commonwealth statutory authority, the National Disability Insurance Agency (NDIA), to administer the National Disability Insurance Scheme.</p> <p>The NDIA should be subject to the requirements of the Commonwealth Authorities and Companies Act 1997 (CAC Act), not the Financial Management and Accountability Act 1997.</p>	<p>The NDIA’s precise role in administering the scheme would be dependent on whether the one level of government or a federated model was adopted.</p> <p>The proposed structure, however, limits the involvement of, and accountability to, the States and Territories. Consideration should be given to whether this limited governance role is appropriate and whether other roles and functions for States and Territories should be identified.</p>
<p>7.2 An independent board should oversee the NDIA. The board should comprise people chosen for their commercial and strategic skills and expertise in insurance, finance and management.</p> <p>As specified in the CAC Act, the board should not be constituted to be representative of particular interest groups, including governments, disability client or service provider groups.</p> <p>The Australian Government and the state and territory governments should together establish an appointment panel comprising people</p>	<p>NSW suggests the Commission further consider that the only governance role proposed by the Commission for the States and Territories is in relation to appointments to the NDIA board and Advisory Council.</p> <p>States and Territories will need to consider whether they wish to have responsibility for board appointments if they have no other formal mechanism for influencing disability policy.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>with skills and experience in these areas, including people with a clear interest in disability policy issues.</p> <p>The panel should nominate candidates for each board vacancy against tightly specified selection criteria set down in the Act governing the NDIA. Appointments should be based on the majority decision of governments.</p> <p>The Australian Government, with the agreement of the majority of state and territory governments, should have the power to remove the chair or dissolve the board as a whole.</p> <p>The board would have the sole power to appoint the CEO and to sack him or her if necessary, without authorisation from governments.</p>	<p>If the States and Territories are to have a continued role in setting overarching disability policy, consideration would need to be given to how this could be achieved e.g. would Governments be able to issue 'policy' directions?</p> <p>The Commission needs to provide a more in-depth consideration of the options for a federated model involving ongoing service delivery and governance by the States and Territories.</p>
<p>7.3 The Australian Government, together with state and territory governments, should establish an advisory council. The council should provide the board of the NDIA with ongoing advice on its activities and effectiveness in meeting its objectives, from the perspectives of people with disabilities, carers, suppliers of equipment and services and state and territory service providers and administrators.</p> <ul style="list-style-type: none"> • The council should comprise representatives of each of these groups. 	<p>The NSW Government remains unconvinced that a National Disability Insurance Agency is preferable to a Federated model.</p> <p>The Productivity Commission needs to further investigate the model, and prove its value above that of a Federated model.</p> <p>In the event this model is to be considered, council members must be broadly representative across jurisdictions and have demonstrated links with a range of community, disability and service groups. Mechanisms for community consultation should also be available to Council members.</p>
<p>7.4 The arrangements between the NDIA and governments should be at arm's length, and subject to strict transparency arrangements.</p> <p>The federal Treasurer should have responsibility for the NDIA.</p>	<p>The NSW Government remains unconvinced that a National Disability Insurance Agency is preferable to a Federated model.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>7.5 The Australian Government, with the agreement of state and territory governments, should provide the NDIA with its own legislation that specifies its objectives and functions, and its governance arrangements.</p> <ul style="list-style-type: none"> • Financial sustainability should be a specific obligation of the board, the management and the minister, and this obligation should be enshrined in legislation. It should specifically guide any external review body (draft recommendation 7.8). • An entitlement to reasonable support should be enshrined in legislation, together with details about people’s eligibility for services and the range of services to be offered. • Future changes to the legislative framework should be undertaken only by explicit changes to the Act itself, made transparently, and subject to the usual processes of community and Parliamentary scrutiny, and in consultation with all state and territory governments. • Such proposed legislative changes should be accompanied by an independent assessment of the impact of the changes on the sustainability of the scheme. 	<p>The draft Report proposes that the national disability scheme should be enacted by Commonwealth legislation.</p> <p>If the NDIS is to be implemented, consideration would need to be given to whether the Australian Government has sufficient legislative power, or whether a referral of power from the States or nationally applied legislation would be necessary.</p> <p>The legislation should be reviewed by the States and Territories prior to enactment by the Australian Government and should consider how to protect within legislation the enduring role for States and Territories.</p>
<p>7.6 An independent actuarial report on the NDIA’s management of the NDIS should be prepared quarterly and annually, and provided to the board, the regulator, the federal Treasurer, and to all state and territory governments. It should assess risks, particularly in regards to the capacity of the expected funding stream to meet expected liabilities within its funding framework, the source of the risks and the adequacy of strategies to address those risks.</p>	<p>Further work by the Commission is required to ensure that governance arrangements support the sustainability of the NDIS while not hindering the flexibility and capacity of the Scheme to meet the needs of people with a disability.</p> <p>NSW supports transparent and accountable financing arrangements that clearly identify the funding required, potential risks and ways of managing the risks. Provision of the report to the States/Territories is supported. Further clarification is required regarding what the role of the States/Territories will be with regard to this report.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>7.7 A specialist unit should be established within the federal Treasury to monitor the performance of the NDIA against a range of cost and performance indicators, and report its findings annually to its minister, state and territory governments and the public.</p>	<p>Contingent on agreement around the national model, NSW believes monitoring of performance via key indicators for efficiency, effectiveness and equity will ensure accountability. These indicators should apply to the operations of the scheme and to other services provided by the States/Territories to people with a disability.</p> <p>The Commission may also wish to consider other existing bodies that have the expertise in monitoring and reporting on performance such as the COAG Reform Council.</p>
<p>7.8 The NDIA should be independently reviewed, initially after its first three years of operation, and every five years thereafter, with the outcomes publicly and promptly released.</p>	<p>Contingent on agreement around the national model, NSW believes this recommendation will allow the NDIA and the NDIS to be independently reviewed at a time when it is sufficiently established and will have generated sufficient data to ensure a detailed evaluation of its effectiveness in meeting the needs of people with a disability and the sustainability of the NDIS in the long term.</p>
<p>7.9 The NDIA should be subject to benchmarking with other comparable corporate entities to assess its relative efficiency in its various functions, with the federal Treasury initiating benchmarking studies.</p>	<p>Contingent on agreement around the national model, NSW believes the Commission might wish to consider other existing bodies that have the expertise in monitoring and reporting on performance such as the COAG Reform Council.</p>
<p>7.10 The NDIA should establish two service charters that specify respectively the appropriate conduct of the (i) NDIA and (ii) specialist service providers and disability support organisations.</p>	<p>Contingent on agreement around the national model, NSW believes the Commission, as in the comment to Recommendation 7.2 above, could consider the accountability mechanism for the NDIA to be accountable for performance against its Service Charter.</p>
<p>7.11 The wording of the NDIA Act should limit the capacity of merits review processes to widen eligibility or entitlement. It should require that any claims by NDIA clients would need to:</p> <ul style="list-style-type: none"> • meet a 'reasonable person' test 	<p>Contingent on agreement around the national model, NSW believes the proposal by the Commission that there should be limited merits review against national disability insurance authority decisions and internal complaints handling procedures (supported by strong statutory duties) should be considered further.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<ul style="list-style-type: none"> • balance the benefits to the person with a disability against the costs to the scheme, including any adverse implications for the long run sustainability of the scheme from the review outcome • take into account the obligation of people with disabilities or their families to avoid decisions that unreasonably impose costs on the scheme. 	<p>The Report also proposes that the NDIA will not be subject to the direction and control of the Australian Government Minister (or any other Minister) in relation to individual decisions.</p> <p>Consideration needs to be given to whether any additional accountability mechanisms will be necessary or desirable. For example, in NSW, a Parliamentary Joint Committee oversees the Ombudsman and ICAC, although it cannot review individual decisions.</p> <p>The Commission should also consider whether there should be a mechanism for dealing with serious complaints of maladministration by the NDIA.</p>
<p>7.12 The NDIA should include an internal complaints office that would:</p> <ul style="list-style-type: none"> • be separate from the other parts of the NDIA dealing with clients and service providers • hear complaints about breaches of the service charters (draft recommendation 7.10) • reassess contested NDIA decisions on a merit basis. <p>The office would be headed by an independent statutory officer who would review appeals made by people with disabilities and support providers against the decisions of the NDIA.</p> <ul style="list-style-type: none"> • The NDIA legislation should create this role and specify that the officer would be independent, would act fairly and impartially, basing their decisions on the available evidence, and could not be directed in their decision-making. • A person or support provider should only be able to appeal the decisions of the office on matters of law, rather than on merit, to the courts. <p>The NDIA should publish the number, types and outcomes of complaints and appeals (subject to privacy protections).</p>	<p>The role and responsibilities of a complaints office would need to be incorporated into and consistent with other complaint mechanisms in place nationally and within jurisdictions – the ‘jurisdiction’ of the office would need to be clearly defined in that regard. The use of the service charter to clarify the extent of the powers and responsibilities of the NDIA as opposed to individual service providers could be part of that process.</p> <p>The Commission should also consider possible impacts on State-based complaints processes and what regulatory changes may be needed.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>7.13 If the proposal in draft recommendation 7.12 for appeal processes supported by an independent statutory officer are not adopted, then the Australian Government should create a specialist arm of the Administrative Appeals Tribunal to hear appeals on merit about the NDIA’s decisions subject to the constraints of draft recommendation 7.11. The Australian Government should set aside significant additional resources to fund this specialist arm and should include a larger reserve for the NDIS, calculated to take account of the higher risks of this approach.</p>	<p>A complex appeals process may place additional burden on specialist service providers, in terms of time and resources, if required to repeatedly defend their position, decisions or actions through this process. Recommendation 7.12 appears the preferable option.</p> <p>If the external judicial review model is taken up, the Tribunal should be adequately equipped with fact-finding powers to test competing claims as to need, particularly where appellants are self-represented</p>
<p>8.1 The NDIA should support consumer decision-making by providing:</p> <ul style="list-style-type: none"> • a centralised internet database of service providers that indicates the ranges of products and services, price, availability and links to measures of performance and quality • well resourced and effective provision of advice and information to clients, as well as monitoring of their wellbeing. <p>These services should be graduated in terms of the needs of the client and concentrated at key points, such as when entering the disability system or important transition periods.</p>	<p>Information regarding access to advocacy services should also be available to support consumer decision making.</p> <p>The ability for consumers to provide comment on the services they use and for these to be publicly available should be considered in the information on service providers. However, the criteria for determining information to be included would need to protect against vexatious complaints.</p> <p>The task and cost of maintaining this database need to be carefully considered, including capacity for self reporting of information by providers.</p>
<p>8.2 The Australian Government should fund and develop a national system for a shared electronic record of the relevant details of NDIA clients, including assessed need, service entitlements, use and cost of specialist disability services, outcomes and other key data items with privacy safeguards.</p>	<p>The proposal has the capacity to ensure timely referral of people with a disability to services and that people do not have to repeat their story many times.</p> <p>The proposal will also allow for the conduct of a ‘living’ longitudinal study, evaluation of the cost-effectiveness of the scheme both nationally and comparatively between jurisdictions, and the identification of questions requiring additional research designed to improve the scheme and service user outcomes.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>It is suggested that the Commission considers inclusion of the capacity for an individual to log in, see their own records, access email and send their records or reports to private providers of their choice. The Commission should also consider embedding the sharing arrangement (including privacy rules) in legislation.</p>
<p>8.3 The NDIA should develop and implement a quality framework for disability providers, which would include:</p> <ul style="list-style-type: none"> • the development of complete, nationally consistent standards that would apply to all funded specialist service providers and disability support organisations. The NDIA should monitor compliance with these standards and other regulations through a range of instruments, including graduated and rolling audits of service providers, community visitors, senior practitioners, independent consumer surveys, complaints, surveillance by case managers and interrogation of the electronic disability record • arrangements that encourage the diffusion of best practice throughout the disability sector • providing consumers with information about the quality and performance of service providers on the national internet database of service providers • establishing an innovation fund that providers would use for developing and/or trialling novel approaches to disability services. 	<p>Work being undertaken under the National Disability Agreement to develop a National Quality Framework for Disability Services in Australia will provide nationally consistent standards and any further work by the NDIA should be underpinned by this work.</p> <p>Jurisdictions have agreed to align their own standards to the National Standards and in NSW all work being undertaken to develop the NSW Quality Framework for Disability Services is being driven by work at the national level.</p> <p>One of the key objectives of the National and NSW Quality Frameworks is to focus quality systems on measuring and improving outcomes for people with a disability, their families and carers and introducing independent processes to assess the quality of services being delivered.</p> <p>Any development by NDIA should also consider and recognise the work at a jurisdictional level to reduce red tape and streamline the administrative burden on service providers.</p> <p>The recommendation for public access to information on provider quality and the ability for service users to provide more subjective comment on their experience with a particular provider has merit. It would be critical that verification of provider quality information is included in the quality framework.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>NSW is currently working on the parameters for an innovations fund. This was a direction supported by the Commission in its review of the not-for-profit sector and will be a major component in testing and sharing new approaches to service delivery which are unconstrained by the current program based funding regimes.</p>
<p>9.1 The Australian Government and state and territory governments should consider the feasibility of overcoming the barriers to service delivery in the NDIS for Indigenous people with a disability by:</p> <ul style="list-style-type: none"> • fostering smaller community-based operations that consult with local communities and engage local staff, with support from larger experienced service providers • employing Indigenous staff • developing the cultural competency of non-Indigenous staff. <p>In its initiatives for delivering disability supports to Indigenous people, the NDIS should be mindful of the wider positive measures addressing Indigenous disadvantage being adopted throughout Australia.</p>	<p>In NSW, ADHC has endorsed the Aboriginal Service Delivery Model: Delivering for Aboriginal people with a disability and their families. It is a conceptual framework to operate as the key direction for improving outcomes and better access for Aboriginal people with a disability and their families in NSW.</p> <p>The model takes a community cluster approach with a demonstration project having commenced in the NSW Southern Region in 2010.</p> <p>Guidelines ensure that services required by Aboriginal people with a disability under this program are as flexible as needed, with the client being the driver of how services are delivered to meet their needs and from where services are sourced. Better coordinated human services for Aboriginal people with a disability are a major focus and will be an integral aspect of the evaluation process.</p> <p>The individual packaged support model, which incorporates a person-centred and lifespan approach, was developed in response to issues and constraints identified through extensive consultation processes over 2009-2010.</p> <p>The model embeds Aboriginal cultural values, perceptions and obligations and enhances the current service system arrangements. Aboriginal people supported by a package would have the capacity to use a range of services, according to choice and need.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>The model is focussed on providing sustainability with the informal supports and care arrangements that an Aboriginal person with a disability may have through time-limited individual support packages.</p> <p>ADHC has developed an Aboriginal Cultural Inclusion Framework (ACIF)⁴ as the vehicle for driving <i>Stronger Together 2</i> reforms within the agency and across the sector. ACIF incorporates a robust reporting and accountability requirement that ensures funds are targeted and used to meet agreed needs at an appropriate quality.</p> <p>The ACIF includes the following significant strategies:</p> <ul style="list-style-type: none"> • Aboriginal Employment Strategy • Aboriginal Consultation and Engagement Tool Kit • Aboriginal Cultural Competency Training Framework • Aboriginal Impact Statements (guidelines and checklist).
<p>10.1 Prior to the implementation of the NDIS, the NDIA should design and establish extensive and robust data systems, underpinned by the associated information technology and administrative systems. The systems should be used to develop a central database that would:</p> <ul style="list-style-type: none"> • guide financial management of the scheme, and in particular, to continuously manage risks to scheme sustainability and to pinpoint areas of inefficiency • inform decisions about disability services and interventions • enable performance monitoring of service providers • monitor and evaluate outcomes <p>Disability support organisations and service providers would be required to provide timely relevant data to the NDIA.</p>	<p>As part of the NSW commitment to person-centred approaches, lifespan planning and better governance and reporting under <i>Stronger Together 2</i>, ADHC is enhancing its administrative systems used to collect and exchange data with the NGO sector.</p> <p>This enhancement, in conjunction with recent investment in a new Funding Management System, is expected to deliver a robust platform for people with a disability (in conjunction with service providers and the funding agency) to manage the entry and pathway of people receiving individualised support packages.</p> <p>The system will permit reporting at both an operational and strategic level and provide information to assess the short term, midterm and long term success of current and proposed interventions.</p>

⁴http://www.adhc.nsw.gov.au/_data/assets/file/0003/236829/ADHC_Aboriginal_Policy_Statement_web.pdf - accessed on 27 April 2011

Draft recommendations by the Productivity Commission	NSW Government comments
<p>10.2 NDIA should establish an independent research capacity under the NDIS. It should determine how research is undertaken and the research agenda, following public consultation.</p>	<p>It is recommended that the Commission, in the development of the research agenda, takes a broad view on disability research that does not focus solely on operational matters. This will be critical to support determination of early intervention therapies to be funded from the NDIS.</p> <p>As discussed in the Report, it may be most appropriate for research to be conducted through a mix of in-house and commissioned research depending on where relevant expertise is located.</p> <p>Jurisdictions have recently undertaken extensive community consultation, including consultation with the academic sector, to develop a National Disability Research and Development Agenda – this should be used as the basis for the proposed research program.</p>
<p>10.3 The NDIA should make relevant data, research and analysis publicly available, subject to confidentiality, privacy and ethical safeguards.</p>	<p>This recommendation would require similar agreements being put in place to those that currently exist between the Australian Government and jurisdictions for publication of data.</p>
<p>10.4 In implementing draft recommendation 10.1, the NDIA should determine after consultation with relevant stakeholders, including the Australian Privacy Commissioner:</p> <ul style="list-style-type: none"> • the key actuarial information needed to underpin sound scheme management • data standards, definitions, terminology, collection processes • data reporting standards, taking into account the Australian Government's initiatives for standard business reporting • arrangements for achieving inter-connectedness of information technology systems among the NDIA, other relevant government agencies and service providers • rules for accessing data, including confidentiality and privacy safeguards • arrangements for integrating data and associated information technology and administrative systems with e-Health initiatives. 	<p>Work progressed under this recommendation to establish data reporting standards should be closely aligned with the planned NMDS redevelopment which focuses on administrative data.</p> <p>Requirements for data to be used for improved actuarial modelling should be negotiated as part of the proposed enhancement to the SDAC.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>The NDIA should then establish data collection and associated IT and administrative systems that link all agencies and service providers within the disability system.</p>	
<p>11.1 Early intervention approaches used by the NDIA should draw on evidence of their impacts and be based on an assessment of the likelihood of cost effectiveness. NDIS funding for early intervention should be additional to that allocated to clients for their ongoing care and support and should not be able to be cashed out under self-directed care packages.</p>	<p>It is critical to have the capacity for high up-front early engagement funding to a person. Such funding could be for modifications or equipment or as support funding to stabilise the person’s situation.</p> <p>Early engagement aims to negate or delay the need for more restrictive and costly ongoing support models.</p> <p>The scarcity of evaluations of early engagement programs is noted and, as such, further information is required on how cost effectiveness will be assessed.</p> <p>Cost effectiveness as the measure for determining whether an approach is approved needs to be balanced with its likely benefits for the client and the alternatives for the person if the early engagement approach is not approved.</p> <p>Comments at recommendation 3.1 above noted pilot projects developed by the NSW LTCSA which are based on evidence that higher levels of participation reduce the demand for care.</p>
<p>11.2 The NDIA should build an evidence base on early intervention. It should commence this task by identifying, in consultation with stakeholders, existing or potentially promising approaches for further research.</p>	<p>This recommendation highlights a priority for the proposed research agenda – the lack of evaluation or an evidence base regarding the effectiveness of early intervention and prevention.</p> <p>NSW is committed to robust research and evaluation. However, please also note comments at recommendation 11.1 above regarding the need to consider more than just cost effectiveness.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>12.1 The costs of supporting people with a disability from year to year should be met from claims on general government revenue (a ‘pay as you go’ scheme):</p> <ul style="list-style-type: none"> • but would be subject to the strong disciplines for certainty of funding specified in draft recommendation 12.2 • supplemented by payments to create reserve funds. <p>However, the scheme should be managed and reported as if it were a ‘fully funded’ scheme in which each year’s funding is considered in the context of the scheme’s expected future liabilities.</p>	<p>The Australian Government is best placed to provide the required funding base for the NDIS. However, further work and analysis is required.</p>
<p>12.2 The Australian Government should direct payments from consolidated revenue into a National Disability Insurance Premium Fund, using an agreed formula entrenched in legislation that:</p> <ul style="list-style-type: none"> • provides stable revenue to meet the independent actuarially-assessed reasonable needs of the NDIS • includes funding for adequate reserves. <p>If that preferred option is not adopted the Australian Government should:</p> <ul style="list-style-type: none"> • legislate for a levy on personal income (the National Disability Insurance Premium), with an increment added to the existing marginal income tax rates, and hypothecated to the full revenue needs of the NDIS • set a tax rate for the premium that takes sufficient account of the pressures of demographic change on the tax base and that creates a sufficient reserve for prudential reasons. 	<p>The Australian Government is best placed to provide the required funding base for the NDIS. However, further work and analysis is required.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>12.3 The Australian Government and state and territory governments should sign an intergovernmental agreement specifying that:</p> <ul style="list-style-type: none"> • the Australian Government should: <ul style="list-style-type: none"> – collect all of the revenue required to fund the NDIS through the National Disability Insurance Premium Fund – make no further special purpose payments to state and territory governments for disability supports. • state and territory governments should offset the Australia-wide fiscal implications of the transfer of responsibility by either: <ul style="list-style-type: none"> (a) reducing state and territory taxes by the amount of own-state revenue they used to provide to disability services or (b) transferring that revenue to the Australian Government. <p>The Commission sees particular merit in option (a).</p> <p>Any NDIS funding arrangements should ensure that state and territory governments that provide less own-state funding for disability supports than the average should not be rewarded for doing so.</p>	<p>The recommendation assumes that the State removes itself completely from disability funding and the Commonwealth assumes full responsibility.</p> <p>It would be expected that any NDIS funding arrangements should be sufficient to fund the requirements of the Scheme from commencement without any ongoing or residual obligations by the State.</p> <p>State governments need to retain access to growing and stable revenue sources including the capacity to raise additional revenue at the margin. NSW capacity to agree to any transfer of, revenue or reduction in taxes or alternative offset arrangements will need to be carefully considered.</p> <p>NSW supports reform that increases the efficiency of the disability service system and builds sustainability of funding required to meet increasing demand.</p> <p>NSW agrees that, given the significant level of funding for disability services by NSW, the proposed funding mechanisms will need to ensure the NDIS does not reward States which have previously under-funded disability services.</p>
<p>13.1 The Australian Government should attract further support workers into the disability sector:</p> <ul style="list-style-type: none"> • by marketing the role and value of disability workers as part of the media campaign launching the creation of the NDIS • by providing subsidies to training of disability workers • through immigration of support workers, but only in the event that acute and persistent shortages occur, and drawing on the lessons from the Canadian Live-In Caregiver program and other similar programs. 	<p>As recognised in the draft Report, the NSW Government provides funding for <i>CareCareers</i>, a project funded by ADHC and being conducted by National Disability Services which is designed to grow the pool of talent available within the NSW disability and community care sector.</p> <p><i>CareCareers</i> includes an internet based recruitment service and a multimedia campaign. The <i>CareCareers</i> website/internet portal provides information to people with an interest in a career in the industry.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>As part of the multimedia campaign, television advertisements were released in early 2010 and recently re-launched, running from January - April 2011. The advertisements feature workers and clients in disability support organisations.</p> <p>For the NDIS to build on this will require national strategies to:</p> <ul style="list-style-type: none"> • Develop a nation-wide process for collecting data on the disability paid and volunteer workforce. • Review the impact of individuals recruiting and employing their own support workers on the conditions of employment of workers in the sector, and on wider sector recruitment and retention. • Develop a framework for, and promote, the volunteer workforce. • Include strategies for attracting and training CALD and Aboriginal workers.
<p>13.2 Australian governments should ensure that, across all jurisdictions, police check arrangements for paid workers providing services to people with a disability:</p> <ul style="list-style-type: none"> • apply only in cases where both the person with a disability is vulnerable AND the risks associated with delivery of services are sufficiently high • not include disclosure of crimes covered by spent convictions legislation • cover people for a given period, rather than for a particular job. 	<p>A clear, critical baseline probity checking system that promotes consistent and efficient practice across the funded disability sector should be based on a risk management approach</p> <p>Broadly this system would involve the development of guidelines and support (such as training) for NGOs; consider a range of strategies rather than relying on criminal record checks as the main vehicle for achieving that probity and cover staff recruitment and management practices.</p> <p>Boards of Management of funded services should consider the inherent requirements of a position being filled and develop policies to ensure that Criminal Record Checks are undertaken where appropriate. It is recommended that spent convictions be dealt with in accordance with relevant legislation.</p> <p>In NSW a new system for the Working with Children Check is currently being developed based on an accreditation model which will last a specified period.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
	<p>Introduction of a time limited cover to those who work with vulnerable adults and where the need for this cover is identified through level of risk should be further explored.</p>
<p>13.3 In order to promote training and counselling for carers, the NDIS should:</p> <ul style="list-style-type: none"> • assess carer needs as well as those of people with disabilities (draft recommendation 5.6) and, where needed, use the assessment results to: <ul style="list-style-type: none"> – refer people to the ‘Carer Support Centres’ recommended in the Commission’s parallel inquiry into aged care and to the National Carers Counselling Program – include the capacity for accessing counselling and support services for carers as part of the individual support packages provided to people with a disability • assess the best training and counselling options for carers of people with disabilities as part of the NDIS research and data collection function. 	<p>The availability and provision of training and counselling is important in improving client and carer outcomes and reducing support costs (including the need for long term intensive support). It is strongly supported as a component of the scheme.</p> <p>It is important to streamline the carer support system, given the current complexities of funding and service provision regarding carers.</p> <p>As such, the development of a ‘one stop shop’ for carers that would link to all existing carer support services is supported. In order to fulfil these objectives and to ensure that referrals are appropriate to the individual needs of all carers, ‘Carer Support Centres’ should be established under the National Carer Framework and not be established under the aged care system.</p> <p>‘Carer Support Centres’ should have the ability to support all carers, including those caring for people who have a disability or are ageing, as well as those caring for people with mental illness, chronic illness and drug and alcohol dependencies.</p> <p>Including the capacity for accessing carer services within the individual package of the person they are caring for is supported in principal, provided that the part of the package dedicated to meeting assessed carer needs is quarantined and protected for that purpose, in order to avoid being absorbed into the support needs of the individual. NSW supports assessing best methods of supporting carers. Refer to response at recommendation 5.6.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>13.4 The Australian Government should amend s. 65(1) of the Fair Work Act 2009 to permit parents to request flexible leave from their employer if their child is over 18 years old, but subject to an NDIS assessment indicating that parents are providing a sufficiently high level of care.</p> <p>After monitoring the impacts of this legislative change, the Australian Government should assess whether it should make further changes to the Act to include employees caring for people other than children.</p>	<p>Strategies which support carers' involvement in the workforce and provide economic and social benefits are warranted. This is in keeping with the NSW Carers Charter, which states that carers should have the same rights, choices and opportunities as other Australians. The ability to work is an important option for carers as it has the potential to reduce financial strain and social isolation.</p>
<p>16.1 State and territory governments should establish a national framework in which state and territory schemes would operate — the National Injury Insurance Scheme. The NIIS would provide fully-funded care and support for all catastrophic injuries on a no-fault basis. The scheme would cover catastrophic injuries from motor vehicle, medical, criminal and general accidents. Common law rights to sue for long-term care and support should be removed.</p>	<p>The current arrangements for funding and benefits under the Lifetime Care and Support Scheme and workers compensation scheme are very different to the proposed NDIS, making retention of separate arrangements logical.</p> <p>The LTCSA in NSW is the model for the Productivity Commission proposal. The extension in NSW beyond motor vehicle injury into other areas is possible and could be managed through the LTCSA given that the majority of catastrophic injuries are already dealt with in the Scheme. Funding will be the determining factor.</p> <p>If common law rights for long-term care and support are removed, it will be critical that there are no gaps – that no-one's common law rights are removed when they are not entitled to care under the NIIS. It will, for example, be important that if injuries arising from a disease where there may be action for negligence may not be covered by the NIIS, that people retain their common law rights in relation to this.</p> <p>The <i>Motor Accidents Compensation Act 1999</i> addresses this by providing (s130A) that: 'No damages may be awarded to a person who is a participant in the Scheme under the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> for economic loss in respect of the treatment and care needs (within the meaning of that Act) of the participant that relate to the motor accident injury in respect of which the person is a participant in that Scheme'.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>16.2 State and territory governments should fund catastrophic injury schemes from a variety of sources:</p> <ul style="list-style-type: none"> • compulsory third party premiums for transport accidents • municipal rates and land tax for catastrophic injuries arising from victims of crime and from other accidents (excluding catastrophic medical accidents) <p>Once the NIIS is fully established, the Australian Government should examine the scope to finance catastrophic medical accidents from re-weighting government subsidies and doctors' premium contributions.</p> <p><i>[The Commission is seeking feedback on interim financing arrangements for catastrophic medical accidents — see 'Information Requests' at the end of the recommendations section.]</i></p>	<p>Further work will be required to establish the funding sources for any catastrophic injury scheme.</p> <p>While municipal rates and land tax are relatively efficient taxes, hypothecation of revenue from these sources is not supported. Dedicated taxes are often subject to unexpected shortfalls and surpluses. This may create political pressure to adjust the tax, to budget non-dedicated revenues instead, or to reallocate surplus funds to other purposes.</p> <p>Further detail is required on the overall funding requirements for the NDIS and the NIIS, including the quantum of funding required and the final proposed funding model(s), before full comment can be made on this issue.</p>
<p>16.3 The NIIS should be structured as a federation of separate state catastrophic injury schemes, which would include:</p> <ul style="list-style-type: none"> • consistent eligibility criteria and assessment tools, and a minimum benchmarked level of support • consistent scheme reporting, including actuarial valuations and other benchmarks of scheme performance • shared data, cooperative trials and research studies • elimination of any unwarranted variations in existing no-fault schemes. <p>State and territory governments should agree to a small full-time secretariat to further the objectives outlined above. The NIIS and the NDIA should work closely together.</p>	<p>The LTCSA in NSW is the model for the Productivity Commission proposal. The extension in NSW beyond motor vehicle injury into other areas is possible and could be managed through the LTCSA given that the majority of catastrophic injuries are already dealt with in the Scheme. Funding will be the determining factor.</p> <p>Further work will be needed to determine an appropriate governance structure for the NIIS and the mechanism for the NIIS and the NDIA working together.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<p>16.4 State and territory governments should consider transferring the care and support of catastrophic workplace claims to the NIIS through a contractual arrangement with their respective workers' compensation schemes, drawing on the successful experiences of Victoria's Worksafe arrangements with the Transport Accident Commission.</p>	<p>This issue would need to be considered in more detail in the implementation of the NIIS.</p>
<p>16.5 The initial priority for the NIIS should be the creation of no-fault accident insurance schemes covering catastrophic injuries arising from motor vehicle and medical accidents in all jurisdictions, with schemes in place by 2013. Other forms of catastrophic injury should be covered by at least 2015.</p> <p>An independent review in 2020 should examine the advantages and disadvantages of:</p> <ul style="list-style-type: none"> • widening coverage to replace other heads of damage for personal injury compensation, including for pecuniary and economic loss, and general damages • widening coverage to the care and support needs of non-catastrophic, but still significant, accidental injuries, except where: <ul style="list-style-type: none"> – the only care needed can be provided by the health sector – the injuries arose in workplaces covered by existing workplace insurance arrangements. • merging the NIIS and the NDIS. 	<p>The NSW LTCSA currently provides no fault cover for catastrophic injury from motor vehicle accidents. The extension to other catastrophic injury is dependent upon funding arrangements. Assuming that the funding arrangements can be satisfactorily determined, NSW considers the timeframes listed here to be achievable.</p> <p>The Commission should also note that legislative changes will be required. The Commission should also examine whether as the proposed NIIS is for new claims only, a process enabling existing claimants to 'buy in' could be developed.</p> <p>It should be noted that the implementation of the NIIS has the potential (by assisting with the containment and management of costs) to provide significant savings to the Australian Government as it currently subsidises doctors' insurance premiums e.g. through the Blue Sky Scheme.</p> <p>It will be essential in the 2020 review to consider people who have a significant but less than catastrophic injury to ensure that there is no cost shifting to the NDIS which may affect its sustainability.</p>
<p>17.1 In the second half of 2011 or early 2012, the Australian Government and the state and territory governments should, under the auspices of COAG, agree to a memorandum of understanding that sets out an in-principle agreement:</p> <ul style="list-style-type: none"> • that the NDIS should commence in stages from January 2014, be rolled out nationally in 2015 and be fully operational by 2018 	<p>It is considered that the timing, especially regarding in-principle agreement through COAG in 2012, appears unrealistic.</p> <p>The NDIS is complex and has significant implications for the States and Territories so that negotiations are likely to be lengthy. Also, there is no indication yet of the Australian Government position on the NDIS.</p>

Draft recommendations by the Productivity Commission	NSW Government comments
<ul style="list-style-type: none"> • to follow the reform timetable for the NDIS specified in draft recommendation 16.5. 	<p>NSW, however, would recommend the Hunter region be the pilot region of the NDIS. Further discussion of this is provided on page 60, of this paper.</p>
<p>17.2 The Australian Government and the state and territory governments, under the auspices of COAG, should create:</p> <ul style="list-style-type: none"> • a full-time high level taskforce from all jurisdictions to commence work on the detailed implementation of the NDIS <ul style="list-style-type: none"> – to be headed by a person with insurance or disability experience who has driven change successfully in a large organisation, appointed with the agreement of all jurisdictions – with a draft intergovernmental agreement to be prepared for final consideration and agreement by COAG in February 2013. • a full-time high level taskforce from all jurisdictions to commence work on the implementation of the NDIS by the states and territories. 	<p>After endorsement by COAG, further discussion by the Australian Government and the State and Territory governments will be needed concerning the mechanism for the implementation of the agreed Schemes.</p>
<p>17.3 In the period leading up until the full introduction of the NDIS, the Australian Government should supplement funding under the National Disability Agreement to reduce some of the worst rationing of support services.</p>	<p>Depending on the level of supplementation, this proposal could enable NSW to ensure full coverage of all people with a disability leading up to the implementation of the NDIS. However, further consideration of the details of the proposal is required.</p>
<p>17.4 In 2020, there should be an independent public inquiry into the operation of the NDIS and its effectiveness in meeting the needs of people with disabilities. The review should also encompass the review of the NDIS as set out in draft recommendation 16.5.</p>	<p>The scope, form and financing of this inquiry needs to be considered in more detail closer to 2020.</p>

ADDITIONAL INFORMATION REQUESTED BY THE PRODUCTIVITY COMMISSION

1. While the Commission has proposed a simple approach for the separate funding responsibilities of the aged care and disability sectors (draft recommendation 3.5), the Commission seeks feedback on other possible funding approaches.

NSW Response

The simple approach proposed by the Commission for separate funding responsibilities of the aged care and disability sectors is the most workable option.

The approach would reduce administrative duplication and red-tape for service providers and should ensure that people with a disability do not need to worry about service continuity when they reach 65 years of age. The option for people to stay within the NDIS after they reach 65 years of age is consistent with community expectation and principles of ageing in place.

2. The Commission seeks feedback on where the boundaries between the mental health sector and the NDIS might lie.

NSW Response

Both the mental health and disability sectors play a critical role for some clients, particularly those with a dual diagnosis. However, there are some clear boundaries that should be maintained and managed with the establishment of an NDIS. At a minimum the roles and responsibilities should be consistent with the *Disability Services Act NSW 1993*, that is, disability services assist with activities of daily living, with mental health services responsible for clinical management and rehabilitation.

The establishment of an NDIS provides an opportunity to build on these established responsibilities. It is also essential that the NDIS does not become responsible for any shortfall in capacity within the Mental Health system.

A joint strategy (including the Mental Health, Disability and Criminal Justice sectors) should be employed to build cross sector capacity and skill sets and a joint understanding of roles and responsibilities.

The Commission should clarify the definition of mental illness in its final Report to ensure that the needs and services required by people with a psychiatric disability are considered as part of the NDIS. The Commission should consider specific consultation with the mental health sector.

NSW supports the adoption of an inclusive coordinated approach within the NDIS in relation to people experiencing a mental illness/mental health disability. This would incorporate a clear, ongoing role and responsibility for the specialist mental health sector in relation to such services as acute community and inpatient care, and intensive and ongoing case management in relation to clinical mental health needs.

The Mental Health sector may provide a case manager or key worker to coordinate delivery of clinical mental health services. The specialist mental health sector should remain within the health sector.

Daily disability support needs may be best provided via the non-government (NGO) sector as is occurring under mental health Housing and Accommodation Support Initiative (HASI). NGO disability support providers could be funded, via the NDIS, to provide supported accommodation and other services required by people experiencing a mental illness/mental health disability to support greater independence in daily living, promote increased skill development and facilitate more active participation in personal and community activities. The NDIS, via contracting of a targeted NGO, could also fund/provide a case manager to coordinate delivery of disability support services.

To ensure flexible and responsive support to people experiencing a mental illness/mental health disability both the mental health and the disability support sectors should have some brokerage capacity to purchase appropriate supports from the other sector as needed, with this brokerage funding monitored against cost shifting.

A collaborative person-centred approach to planning is required in order to determine the sector(s) that best meet the identified needs of individuals and to further determine the roles and responsibilities assigned to representatives from the disability support and mental health sectors. This approach requires a streamlined approach to information exchange, assessment, referral, and follow up processes. Funding and policy for advocacy services should be aligned across both sectors

Incentives should be built into services across both sectors to achieve employment and independence/self reliance for individuals.

All mainstream services should be encouraged and positioned to provide access to people with a disability and/or mental health condition as for the general population.

Which services would be provided by the NDIS and not the mental health sector and how these could be clearly identified?

Services that focus on clinical management or rehabilitation/remediation should remain the responsibility of the mental health sector (i.e. separate out what is health/treatment focussed activity and what is disability support activity). Such services involve the use of targeted engagements intended to prevent further, or reduce current, disability. They assist people to acquire and to use the strengths and skills, supports and resources necessary for successful and satisfying living, learning and working in the environments of their choice. These services are currently provided by NSW Health through a range of programs operating through clinical services and NGOs.

Integrated specialist accommodation support should remain with the mental health sector to ensure it remains integrated with clinical support functions. Similarly other psychosocial rehabilitation programs, such as the NSW Recovery and Resource Services Program, which caters for the severe end of the spectrum, would sit better within mental health.

The linkage is especially important to support integrated service provision for people in the severe end of the spectrum. There are service coordination issues if these functions are delivered by different providers.

Disability support services that focus on compensatory strategies, for example domestic assistance and home maintenance, are required for people with a disability arising from mental illness. The proposed NDIS has the potential to provide enhanced services for this group. The Commission may wish to consider the benefits of access to such support for this target group.

The other important area for further consideration is around very low level outreach support. NSW (through NSW Health) has examined 'HBOS' (Home Based Outreach Support) and can provide details to the Commission if it would be beneficial.

The Commission should also consider access to services for those with mild and moderate mental health problems as part of the final Report (either as part of the NDIS or as separate recommendations).

How to guard against cost-shifting

National Partnership Agreements can address this issue if service functions and target populations are clearly defined and service responsibilities are clear.

It should be noted that the Tier 2 target population of the NDIS may increase service demands on State funded services. The level of this increase would be determined by the eligibility criteria applied for access to Tier 3 services.

How the NDIS would practically integrate any role in ongoing non-acute services with the wider mental health sector, including any shared responsibilities of case managers in the two systems.

Clearly defined service relationships, including care pathways, would be required.

The use of Memoranda of Understanding between relevant sectors would support clear understanding of partnerships and mechanisms that support these, including consideration of planning and service development as well as structures to support ongoing communication and coordination of services.

3. The Commission considers that the NDIS should fund artificial limbs and seeks feedback on the desirability and practicality of this option. What items should be included in the NDIS?

NSW Response

NSW supports in principle the provision of artificial limbs (prosthetic limbs) under the NDIS. The provision of prosthetic limb services under the NDIS has the capacity to standardise services across Australia and ensure improved access and equity. A national program under the NDIS would have improved purchasing power which can assist in managing the increasing costs associated with prosthetic technology which generally exceeds Health CPI indexation provided to the States.

A challenge will be to define technology that is considered reasonable and necessary given the range of components available and the associated costs. The cost of lower limb prostheses can range between \$5,000 and \$50,000 depending on the technology utilised.

National guidelines which define ‘reasonable and necessary’ should be developed by a reference group consisting of all major stakeholders. These should include flexibility for people to make choices outside the ‘reasonable and necessary’ criteria if they were in a position to self-fund items outside the guidelines.

Due to the small workforce and limited number of prosthetic suppliers, the NDIS would need to ensure that service and procurement models actively sustain a competitive market.

For the majority of unilateral amputees, and many bilateral lower limb amputees, the provision of a prosthetic device will effectively manage the impairment thereby reducing or eliminating any functional disability. Access to other NDIS services (i.e. attendant care services) will be unnecessary or greatly reduced.

With regard to the intersection between the aged care and disability systems, the Commission should consider what aids and equipment are available through the two systems. Currently prostheses are not covered by the Aged Care Schedule.

4. The Commission seeks feedback on the arrangements that should apply in relation to higher electricity costs that are unavoidable and arise for some people with disabilities.

NSW Response

Many assistive technology devices used by people with disability require electricity. These range from battery operated devices that need to be recharged (for example, powered wheelchairs and hoists) to respiratory devices (such as ventilators and oxygen concentrators) that require access to mains power. NSW supports the premise that consideration should be given to the electricity costs, that are over and that of above similar households, incurred by families where a member has a disability.

The Commission should note that in NSW, the Medical Energy Rebate⁵ is for eligible customers who have an inability to self-regulate body temperature when exposed to extremes (hot or cold) of environmental temperatures. To be eligible for the Rebate, a customer is required to have medical diagnosis that they are unable to self-regulate their body temperature. The Medical Energy Rebate is currently \$145 a year. The Rebate will increase to \$161 per year from 1 July 2011.

⁵<http://www.industry.nsw.gov.au/energy/customers/rebates/medical-energy-rebate-questions> - accessed 14 April 2011

The NSW Government's Life Support Rebate program⁶ also assists people who are required to use energy-intensive life support machines at home, in paying their electricity bills. The list of approved Life Support Machines include medical equipment that is essential for supporting life such as home dialysis, ventilators and oxygen concentrators. Rebates vary depending on the type of equipment being used from \$0.05 per day for external heart pumps to \$1.66 per day for ventilators.

5. The Commission seeks feedback on how to ensure that funding support given for taxis under the NDIS is kept within reasonable bounds.

NSW Response

It is not clear from the draft Report whether 'support given for taxis' is intended to cover both fare subsidies and assistance/incentives to taxi operators to provide accessible taxi services. NSW currently provides both kinds of support. A capped, direct fare subsidy is provided to passengers through the Taxi Transport Subsidy Scheme. NSW also issues free wheelchair accessible taxi licences in country areas and \$1000 licences in metropolitan areas.

Other incentives provided include:

- Fully subsidised training for wheelchair accessible taxi drivers;
- A subsidised fare supplement to reflect the additional services that their passengers require; and
- A scheme to provide interest free loans to taxi operators outside Sydney to convert ordinary taxis to wheelchair accessible.

Each year the NSW Government asks the NSW Independent Pricing and Regulatory Tribunal (IPART) to review taxi fares and recommend maximum fares. IPART uses a cost index to examine:

- The need for efficiency in supplying taxi services;
- The social impact of its recommendations; and
- Standards for quality, reliability and safety.

The cost index includes indicators that have a direct and necessary input to operating costs such as fuel, maintenance, insurance and so on. However, it also includes other costs associated with regulation or regulatory compliance.

Areas the Productivity Commission might consider could include:

- The extent to which benefits should apply beyond the efficient costs of providing taxi services;
- Applying specific eligibility criteria to subsidised taxi travel;
- Periodic reviews of eligibility where appropriate;
- Capping of benefits, for example by setting a maximum subsidy per trip and/or maximum number or frequency of subsidised trips; and
- Strong fraud prevention and enforcement programs.

⁶<http://www.industry.nsw.gov.au/energy/customers/rebates/life-support-rebates-questions> - accessed 14 April 2011.

6. The Commission seeks feedback about whether Carer Payment, Carer Supplement, Carer Allowance, Mobility Allowance, and the Child Disability Assistance Payment should fall within the scope of the NDIS.

NSW Response

The core function of the NDIS is to provide services and supports for people with a disability and their families.

The Carer Payment is provided as income support and, as such, covers a range of expenses to do with living and maintaining a household. Likewise, the stated purpose of the Child Disability Assistance Payment and the Carer Supplement is to assist carers with the costs of caring.

Although they enable the carer to care, they are not explicitly about paying for the care needs of the person with a disability.

Transferring administration of these payments to the NDIS would add extra administrative work that may detract from the core function of the NDIS. It is appropriate for these payments to remain with Centrelink, who already have established processes for administering them.

However, the future need for payment specific to carers should be reviewed if the cost of care support is fully met by an NDIS and the carer burden is managed to enable increased carer participation in the workforce and increased community participation. A residual Carer Payment arrangement may serve as a disincentive for greater carer participation in employment.

7. The Commission considers that needs assessments should take account of the extent of natural supports, and that the NDIS should waive the front-end deductible where the value of this support exceeds some government determined level. The Commission would welcome feedback on what that level should be.

NSW Response

The level of contribution should be tapered and developed in consultation with families, carers and funding agencies.

A simple method for determining the level would be to include hours of care in the assessment of need, looking at hours of informal care in the month prior to the assessment. If the amount of care provided in the 30 days prior exceeds a certain number of hours, then the front-end deductible is waived.

Hours to be counted could be those spent assisting with activities of daily living, personal care, supervision and behaviour management, financial management, attendance at appointments related to the disability and any therapy and medical needs attended to by the carer.

8. The Commission seeks feedback on whether these tools, or any other assessment tools, would be appropriate for assessing the care and support needs of individuals having regard for:

- the role of the assessment process in the context of an NDIS
- the desirable traits as outlined in section 5.4.

NSW Response

The conduct of a forward-looking assessment process, rather than one that considers people's current service usage has merit. An assessment process founded on the International Classification of Functioning (ICF) also has merit.

A holistic approach should be used to assess the strengths, aspirations and needs of people with a disability. The assessment approach should be tiered, beginning with a generic assessment which could be conducted using tools such as the Commission's proposed 'toolbox' of resources. Lower tiers would then involve specific assessment of the type of support and engagement to be implemented. By using a tiered approach, with a package of high level tools, duplication of information is avoided for the person with a disability and their family/carers, and information gained is specific and relevant to the support or engagement being provided e.g. case management v speech pathology.

The proposed assessment tools would be useful to guide the top assessment tier in determining a person's service and support needs and ensuring that services are transparent and equitable. Consultation would need to occur with a range of stakeholders e.g. people with a disability, carers, State and Territory governments and NGOs to develop the tools. The Commission also needs to consider the extensive work that has been done in the community care sector to guide assessment of functional and carer needs by staff of Access Points.

NSW notes the Commission's proposal for assessors who are independent of the client and the NDIS. Independence from the client is strongly supported, for the reasons outlined in the draft Report. There are risks to the cost of the scheme and to the clients associated with using assessors independent of the NDIS. These are well articulated in the draft Report and a range of systems proposed to address them.

Two important questions, for the Commission to consider, arise from this discussion:

- Are there learnings from the use of independent assessors used in personal injury insurance schemes to mitigate risks associated with cost escalation and under-provision of support to clients that can be applied to the NDIS?
- Would there be benefits in a consistent approach to assessment tools and training and accreditation of assessors between the NDIS and the NIIS?

The proposal to include a self report will assist in creating a person-centred process. Consideration will need to be given to the weighting given to the self report. Subject to privacy considerations, the assessment process could be the start of a continuous client record which can be used to minimise the need for individuals and families to retell their story or undergo multiple assessments. It could also be used to provide aggregate information on client characteristics, changes in need over time, and changes in support over time which can be used for planning and evaluation purposes.

9. The Commission seeks further feedback on the effectiveness of monitoring instruments and any others that could potentially be used to assist oversight of the disability sector.

NSW Response

Improving the service delivery performance of NGOs and government delivered services requires a focus on continuous improvement, the ability to assess and measure outcomes for people receiving those services, and to use that information to target improvements and identify opportunities for innovation, and improve the overall operational efficiency of providers.

ADHC is working towards a better balance between quality assurance and compliance with the NSW Disability Services Standards and the common Community Care Standards. The development of a Quality Framework together with a risk based monitoring approach, demonstrates the commitment to streamline regulatory burden on service providers and achieve positive outcomes for people with a disability, their families and carers.

This approach requires an increasing emphasis on the responsibilities of boards of management to provide assurance about the mechanisms in place within their organisations to improve performance, engage with a response to the views and needs of stakeholders, and to have effective financial, client and risk management arrangements in place across the whole of the business.

This shift to organisational, performance and quality review is complemented by a move to a risk based approach to monitoring which allows for provider and ADHC resources to focus on addressing identified issues with service delivery in specific providers. This is a major shift from a one size fits all approach to monitoring.

10. The Commission seeks further feedback on the merits of the NDIA funding prevention and early intervention measures specifically targeting Indigenous communities and how this could work in practice.

NSW Response

It is agreed that a separate strategy will need to be developed to ensure the needs of Aboriginal people are met as part of any national approach. Also, any Aboriginal specific strategy will need a significant education and awareness raising campaign to ensure that Aboriginal people with a disability are included and understand what the new approach will mean for them.

Significant work to build the sector will need to be undertaken to ensure it can deliver culturally competent services to Aboriginal people including a strong focus on building the capacity of Aboriginal providers to be sustainable in the new environment.

Although individualised funding models are preferable, block funding may be necessary in certain remote communities to ensure the viability of service delivery.

NSW, via Ageing, Disability and Home Care (ADHC), has commenced the phased implementation of an Aboriginal Service Model which is underpinned by person-centred and early engagement focused individualised support packages. This approach puts the Aboriginal person with a disability at the centre and allows them to design a service response which best meets their needs. As part of *Stronger Together 2* this model will be rolled out over the next five years.

Prevention and early engagement strategies targeted to Aboriginal and Torres Strait communities are supported. It would be important for the NDIA to ensure that Aboriginal Community Controlled organisations are funded adequately and receive training to be involved in the work to ensure that outcomes are achieved.

Strategies should be developed in partnership with Aboriginal communities, with maximum level of community control and should be integrated into other whole of community strategies. For example, early engagement strategies for young children should be integrated into existing Aboriginal child and family services or strategies. It would also be important to ensure that Aboriginal Community Controlled organisations are funded adequately and receive training to be involved in the work, if it is going to be successful.

The NDIS funding injury prevention and early engagement measures specifically targeted at Aboriginal and Torres Strait Islander communities has merit. Injury and poisoning contribute a considerable proportion of deaths and hospitalisations of Aboriginal people in NSW each year. The Centre for Aboriginal Health has recently published a report on *Injuries amongst Aboriginal people in NSW*.⁷ The report includes information on mortality and hospitalisation from injuries.

The NDIS work, however, would need to be overseen by experts in injury prevention and early engagement as well as members of Aboriginal communities where projects were being rolled out. As this would not be an area of 'core business' for the NDIS, it would need to be well planned. It is recommended that, should the NDIS fund any engagement measures, it should work with NSW to ensure that there is no duplication.

11. The Commission seeks feedback on a workable funding arrangement for catastrophic injuries resulting from water, air and railway modes of transport.

NSW Response

More detailed information regarding the design of the scheme is required in order to fully consider and comment on workable funding arrangements.

For example, if a levy on insurance premiums was under consideration, then further investigations and assessments would need to be undertaken in order to identify any potential impacts on premiums and underwriting.

In NSW, the railways and ferries are self-insured. Part of the railways legislation picks up on the common law provisions for motor vehicle accidents.

⁷Centre for Aboriginal Health. 2010. Mortality and Hospitalisation Due to Injury in the Aboriginal Population of New South Wales. NSW Department of Health 2010 (accessed on 5 April 2011 at http://www.health.nsw.gov.au/pubs/2010/pdf/aboriginal_injury_report.pdf)

The Commission has indicated that it will examine the issue more closely after the draft Report and NSW would welcome the opportunity to provide more detailed feedback on any funding arrangements that may be proposed at that time.

12. The Commission seeks feedback on practical interim funding arrangements for funding catastrophic medical accidents covered under the NIIS.

NSW Response

The NIIS could place a levy on medical indemnity insurance. Interim arrangements would not be required as the levy would start from the commencement date of the scheme, catastrophic injuries occurring after that date would be included.

13. The Commission seeks feedback on an appropriate criterion for determining coverage of medical accidents under the NIIS.

NSW Response

The condition/injury must clearly be attributable to mishap or negligence in a diagnosis or procedure, not just from a genetic condition.

With the proposal for two schemes (NDIS and NIIS) it is necessary to clearly delineate what each scheme covers. For example, there are circumstances under which cerebral palsy could be categorised as a disability or as a consequence of a catastrophic medical accident. For clarity of management, the circumstances that determine when and how this is categorised as a medical injury, needs to be fully articulated. If the delineation between the schemes is not clearly articulated and/or the schemes don't provide identical benefits and services, there may be incentives for people to push to get into the 'better' scheme.

14. The Commission seeks feedback on the benefits and risks of requiring nationally consistent disclosure to an appropriately charged body responsible for monitoring and publicly reporting trends in legal fees and charges paid by plaintiffs in personal injury cases.

NSW Response

The proposed requirement has merit. Issues that may arise include:

- The data is not currently collected (new administrative requirements for organisations). It is noted that currently liability providers contribute to the National Claims and Policy Database; this could be used as a model/precursor for the required data collection.
- Need to make changes to the legal disclosures requirements.
- Need to specify the data to be collected and reported.
- Impact on the judicial system by requiring the disclosure of legal fees within settlements.

A requirement for nationally consistent disclosure would help support the capacity to set a fee schedule or cap. A cap on legal fees exists in some States and Territories.

While better information on personal injury legal costs would be useful, there will be considerable costs for both the body collecting this and for law firms which need to be considered and weighed against the benefits. The collecting body would need to be adequately resourced to properly carry out this function.

ADDITIONAL ISSUES THE PRODUCTIVITY COMMISSION MAY CONSIDER IN DEVELOPING THE FINAL REPORT

The material below builds on the above responses to the Report's recommendations and requests for further information. It provides the Commission with additional questions and practice examples to be considered for its final report.

NSW Attendant Care Program (ACP) – Direct Funding Model

The ACP is offered as an example of a program that offers a direct funding model option. Below is a brief discussion of relevant aspects of this model. This information, and the Direct Funding Model Guidelines⁸ (the Guidelines), supplement the response provided against recommendations 6.1 to 6.10.

Under the ACP Direct Funding Model the person's assessed attendant care funding is paid directly to their nominated bank account.

All ACP clients receive an initial (face-to-face) assessment that identifies their current situation, needs, type and level of support, goals and future related referrals and services required. This is used to determine and approve the clients support hours and, thus, funding allocation.

Clients wishing to use the Direct Funding model then submit an expression of interest from which an assessment of their ability to self-manage their care, funding, administration and reporting requirements is made. All Direct Funding Model clients are required to sign a Funding Agreement, which covers areas including:

- How often and in what form payments will be made;
- How funding can be used;
- Responsibilities as a direct funding client, and ADHC's responsibilities;
- Process to save and report saved hours;
- Laws and guidelines to comply with;
- Consequences of non-compliance with the Funding Agreement;
- Clients responsibilities as an employer;
- What records need to be kept by the client;
- Insurance requirements;
- Approved number of hours per week for which clients will receive funding;
- Information clients need to give ADHC about how the funding is spent;
- Circumstances in which direct payments will be stopped;
- Circumstances in which money must be paid back to ADHC.

By signing the Funding Agreement clients agree to meet the responsibilities and obligations outlined in the Agreement, the ACP Guidelines and Procedures and the

⁸http://www.dadhc.nsw.gov.au/NR/rdonlyres/F2249DF5-BB20-412E-8513-FED30662FFD9/4229/ACPDirectFundingModelGuidelinesV10_final.pdf

Direct Funding Guidelines. The client is advised to obtain legal advice about the Funding Agreement and the Guidelines.

The ACP Direct Funding model allows clients to employ their own support worker directly or from an established disability organisation. The Guidelines provide extensive advice on employing support workers/providers, including regarding:

- What do I need to know about purchasing services from a service provider?
- How do I choose a service provider?
- Can I contract with someone who is self-employed?
- What do I need to know about employing my own staff?
- Can I use direct payments to employ my relatives?

Regarding the last question, the Guidelines advise:

'Direct payments are not meant to replace the help you get from your family and community. You cannot use direct payments to get a service from close relatives. A close relative is defined as:

- *An immediate family member (parent, sibling, child, partner).*
- *Any other family member if they live in the same house as you.*

If your circumstances are such that you have limited options regarding the engagement of care attendants, you should discuss your situation with ADHC.

In certain circumstances ADHC may approve limited employment of a relative (other than a primary carer). This may cover a limited number of hours or be for a limited period of time.

For example, if a client lives in a remote locality and has limited access to staff for an emergency or back up service and such situation would put the person at risk, an approval may be provided. Such an arrangement would be negotiated if possible at the time of approval of an Attendant Care package under the Direct Funding Model'.

Provision of Aids and Appliances (Assistive Technology)

NSW welcomes the proposed inclusion of this support as a component of the NDIS and NIIS, but notes that further work is needed prior to and during the Schemes proposed pilot phase to address relevant issues.

This should include formulating a clear definition of what would constitute 'reasonable and necessary' in relation to assistive technology and that the same definition should be used by both the NDIS and the NIIS. This would help to resolve some equity issues that arise between compensable and non-compensable service models in NSW.

In developing the definition, the Commission should consider that the UN Convention on the Rights of People with Disabilities (Article 4)⁹ refers to 'affordable cost' in

⁹<http://www.un.org/disabilities/convention/conventionfull.shtml> - accessed on 21 April 2011

relation to assistive technology rather than ‘reasonable and necessary’. NSW Health (through EnableNSW) is implementing a model of care for assistive technology provision that reflects the different prescription needs and procurement opportunities for providing standard off-the-shelf items through to custom made complex equipment.

NSW recommends that any model of care for assistive technology provision adopted by the proposed schemes should incorporate the following objectives:

- Provides opportunities for the significant cost savings achieved via centralised procurement strategies.
- Ensures consumers have access to independent comparative information on which to make informed choices.
- Facilitates access to independent and specialist prescribers for customised and/or complex equipment to optimise outcomes and eliminate the risk of additional costs incurred through the provision of inappropriate equipment.

Role of assessment tools in determining needs in relation to the provision of assistive technology

Work has been done in NSW which highlights the difficulties in this area. A study commissioned by NSW Health in 2005 was unsuccessful in devising or recommending a common assessment tool for aids and equipment, however this study may help to inform later work in this area¹⁰.

Work force issues

Availability of funds for assessment and prescription of assistive technology through the NDIS may have workforce implications. A high proportion of the prescriptions (68%) for assistive technology for people with a disability received by the NSW state equipment scheme are currently performed by NSW Health employees. The availability of funds in the private and Non-Government sector could result in a movement of experienced public health staff to the private sector and could cause staff shortages in some sectors.

Intersection areas where further work is required

The need for assistive technology to meet a health goal is clear in many instances; however some areas of intersection will require clarification:

- Where a person initially requires equipment during treatment and continues to require it to function in the community after their health condition has stabilised (orthoses used in acute treatment which may also be required long term).
- Whether assistive technology is part of a treatment or to improve function when the equipment addresses both needs simultaneously (e.g. when a patient requires a pressure care mattress due to an acute pressure area and also

¹⁰Masso Met al (2005) *PADP Assessment and Priority Setting based on Need and Capacity to Benefit*, Centre for Health Service Development, University of Wollongong.

requires ongoing pressure management to prevent pressure areas developing and to therefore remain in the community).

- There is ambiguity in regard to some respiratory equipment which supports the function of breathing and also prevents the development of associated health related conditions. For example, bi-level devices provide essential respiratory support to allow people to live in the community but also prevent the development of heart disease and cognitive impairment.
- These intersections need to be clearly defined to ensure gaps and duplications in services do not arise.

ATTACHMENT A

PROPOSAL BY NSW THAT THE INITIAL TRIAL OF THE NATIONAL DISABILITY INSURANCE SCHEME IS HELD IN THE HUNTER REGION

The Productivity Commission¹¹ proposes that the NDIS ‘*would commence in early 2014 in a particular region in Australia, providing high quality services to many thousands of people*’.

The Commission proposes that this ‘*regional arrangement would incorporate all of the functions and structures of the NDIS, and offer supports to the full range of eligible people with a disability in that region. This would allow fine-tuning to test and refine the new scheme structures with a population that is not overwhelming. It would also help build a robust and sophisticated resource allocation process that would serve people’s needs appropriately, while reducing the risks of cost blowouts*’.

NSW, in supporting the NDIS and NIIS, recommends that the Hunter Region be considered as an appropriate trial region for the NDIS due to its population size, mix of rural and metropolitan settings, and the existence of a single Access Point for community care.

The Hunter Region, 120 kms north of Sydney, covers an area of 26,362 km². It is geographically diverse, with a densely populated coastal fringe and a large but more sparsely inhabited rural hinterland.



¹¹Productivity Commission – Draft Report – Disability Care and Support – Overview p. 44.

At the most recent census (2006), the Hunter Region population of 849,630 was approximately 13% of NSW's population. The region is a mixture of urban and rural communities, with the Central Coast area projected to grow faster (39%) than NSW (33%) between 2006 and 2036¹² and Maitland Local Government Area currently experiencing the highest rate of overall population growth¹³.

Most of the population in the Hunter Region lives within 25 kms of the coast, with 55% living in its two cities, Newcastle, the largest city in the region, and Lake Macquarie. The remainder live in surrounding towns and villages.

The Hunter Region population is culturally diverse. NSW has more Aboriginal residents than any other State or Territory and of the total Hunter population, 2.5% or 16,300 Aboriginal people¹⁴ live in the region. Additionally, 3.7% of the total population¹⁵ or 21,750 people speak a language other than English at home.

Hunter Region has a higher ratio of people with a severe or profound disability relative to the NSW average (over 43,000 people, or 5% in the Hunter relative to 4% in NSW¹⁶).

In 2009-10, 14,170 people under the age of 65 received disability support in the Hunter Region. Of these, 7,146 were receiving disability services and 7,024 were being supported through the HACC program.

Services available in the Hunter Region range from information and referral to a full range of specialist disability services including respite, day programs, therapies (speech, occupational therapy and physiotherapy), accommodation support and access to psychologists, case managers, nurses and dieticians. The Hunter Region currently has 576 funded service outlets making up a mix of large residential centres, group homes, in-home support services, respite centres, and day programs, operated by ADHC or provided by funded organisations.

Regional Structure

ADHC's structure is regionally based. A central office develops state-wide policies, manages programs and provides corporate support and strategic leadership to the six ADHC regions- Hunter, Metro North, Metro South, Northern, Southern and Western Regions.

Services are delivered to clients and the community through these Regions, each with a Regional Director and a local management structure. This regional structure enables ADHC to foster closer ties with communities and service providers, to meet the unique needs of local communities and to effectively manage intake and service vacancy.

¹²NSW Statistical Local Area Population Projections, 2006-2036, Dept. of Planning.

¹³NSW Statistical Local Area Population Projections, 2006-2036, Dept. of Planning.

¹⁴ Source ABS Demography Unit, unpublished data, estimates based on 2006 ABS data ABS Cat. 4705.0, released 15 Aug 2007.

¹⁵ Community Relations Commission, *The People of NSW*, 2006.

¹⁶ Source: SDAC 2003

ADHC staff work with the local community to improve service provision in the Region, operating under a Regional Planning and Consultation Framework.

There is a separately funded and administered central Access Point for community care services; this would enable the region to effectively support an NDIS pilot project within the existing structure and service arrangements.

Hunter Access Point

Between March 2008 and March 2009 ADHC trialled the use of a centralised intake, assessment and referral point for its community care services, with a pilot conducted in Hunter Region. Following evaluation by KPMG, the Access Point was made fully operational within the Region.

The Hunter Access Point is a call-centre based model. During the pilot phase, the Access Point processed 7,600 inbound referrals for assessment for Home and Community Care (HACC) services in the Hunter Local Planning Area of the Hunter Region in its nine months of operation in 2008. This has settled to a relatively constant 10,433 and 10,150 inbound referrals respectively in 2009 and 2010.

The Access Point provides assessment and referral for people seeking HACC services in the Hunter Region. It uses a tool known as the Ongoing Needs Identification (ONI) in NSW, and the Australian Community Care Needs Assessment (ACCNA) at the national level. This tool is also in use in South Australia, Victoria, Queensland and Tasmania.

While it was initially designed for the aged care sector, the ONI has been used successfully in disability service provision in NSW, most recently in assessing the needs of school leavers seeking post-school support¹⁷.

The ONI forms a standardised ‘2-tier’ assessment process comprising an initial screening tool, the Functional Screen (Tier 1) plus a range of core assessment components with additional profiles to be used as individual client’s circumstances dictate (Tier 2).

Tier 1 provides a ‘functional overview’, a ‘broad and shallow’ assessment identifying the broad areas of support required and the appropriate level of assessment and service provision indicated. This in turn prompts more detailed needs identification (Tier 2) and indicates the areas to which this will relate. Extensive trials in multiple settings have shown this screening tool works as effectively over the phone as it does face-to-face.

This ‘broad and shallow’ assessment is an assessment of need. It complements the service planning assessment that is completed by service providers which has a focus on a client’s strengths and skills and identifies supports needed to assist them to meet their goals and aspirations.

¹⁷ <http://chsd.uow.edu.au/postschool/index.html> and <http://www.informaworld.com/smpp/content%7Econtent=a755224559%7Edb=all%7Eorder=page> - accessed on 20 April 2011

The ‘broad and shallow’ approach ensures that people who may not self-identify relevant issues do not have these needs overlooked. At the same time, in identifying the areas in which people do not need support, it ensures that assessment is never excessive relative to need. The ONI uses recognised and validated tools, and a common language to ensure that information can be shared and to minimise the requirement for a service user to constantly re-tell their story.

Referrals are sent from the Hunter Access Point to service providers electronically using the NSW Human Services Network, HSNet.

Lessons learned

The Access Point model has been refined over the three years of operation, with the development of a specific strategy to engage General Practitioners in the Hunter region. This has resulted in over 21 % of medical practices in the region now being involved in the project. ADHC is now in negotiations with DoHA about the future use of the Access Point in the development of the new ‘Front End to Aged Care’

A national evaluation of Access Points, also completed by KPMG, indicated that the NSW model was the most advanced in relation to an *eReferral* platform. This feature of the NSW model has ensured secure transfer of client and carer assessment information to a range of service providers.

During the operation of the Hunter Access Point, NSW has identified and built on the following key strategic findings:

- Separation of intake and assessment from service provision contributes to consistency in equity of access and assessment of need. This separation also ensures consistency with regard to eligibility screening.
- Specialist skills are required for staff to fulfil the intake and assessment functions of the model.
- The value of the service model in complex service systems has been reinforced in both regional as well as metropolitan areas.
- Strong management of relationships with service providers is essential, especially given that the NSW model involves the geographic separation of the Access Point from its catchment area. These relationships have been used effectively to manage issues related to service delivery and the role of the Access Point in the service system.
- Integrated information technology (IT) systems are a vital enabler to the success of a central intake and assessment approach, especially in relation to the secure sharing and transfer of client information.
- It is important to have an established referral pathway for clients with complex needs to comprehensive and specialist face-to-face assessment intervention.

- The Access Point has assumed a role in demand management, as it monitors the outcome of all referrals sent to service providers, and takes a case coordination role with clients who have not been accepted for a service.

Improvement and innovation

The Hunter Access Point continually reviews and improves its in-house business processes and procedures in close collaboration with partners and stakeholders in the community, thereby enhancing the quality and consistency of intake and assessment. The Access Point's culture of continual improvement is also supported by its extensive use of integrated IT systems that enable access to 'real time' quality data. The considerable amount of data that is collected through the Access Point is used to support a continuous improvement process with regard to Access Point operations. This improved access to data also has the capacity to improve resource allocation, service development and overall program management.

NSW Position

The strategic aims of the proposals by the Productivity Commission are reflected in *Stronger Together*, the NSW Government's 10-year plan to make the specialist disability system more responsive to the needs of people with a disability and their families and carers. This puts NSW in a prime position to progress the reforms proposed under the NDIS.

The key shift in policy to a person-centred and life span approach, an important element of the NDIS, aligns with the move that NSW has taken under *Stronger Together 2*. This focuses on building a system which maximises the ability of people with a disability to determine how support resources are used and providing greater certainty about future supports so that they are able to plan their lives and build their expectations of what they can set as life goals.

Supporting this approach, individualised funding arrangements are already in place in the Attendant Care Program and Community Participation services for school leavers. Individual funding arrangements will be more widely available for other services from 2011-12. By the end of 2013-14, anyone receiving disability services in NSW will have the option of using an individualised and portable funding arrangement.

This experience, together with the current successful centralised Access Point, means that Hunter Region has the immediate capacity to implement the pilot project proposed by the Commission.

